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Vol. I

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 328

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, ET AL.

No. 329

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

vs.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 22, 1940
CERTIORARI GRANTED OCTOBER 14, 1940

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VOLUME I

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 11970 December Sessions, 1925.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,
Plaintiff,

against-

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Defendant.

STATEMENT OF CLAIM IN ASSUMPSIT

To the within defendant—

You are required to file an affidavit of defense to this statement of claim within fifteen days from the service hereof.

CHARLES SINKLER,
Attorney for Plaintiff.

CHARLES SINKLER, *Attorney for Plaintiff,*
601 Commercial Trust Building,
Philadelphia, Penn.

CRAVATH, HENDERSON & DE GERSDORFF, *of Counsel,*
52 William Street,
New York, N. Y.

DISTRICT COURT OF THE UNITED STATES

Eastern District of Pennsylvania

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

Plaintiff.

against

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Defendant.

STATEMENT OF CLAIM

(Filed Jan. 28, 1926)

First: The plaintiff above named, Bethlehem Shipbuilding Corporation, Ltd., hereby avers that it is, and at all the times hereinafter mentioned since October 15, 1917 has been, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and that the defendant is, and at all the times hereinafter mentioned since April 16, 1917 has been, a corporation organized pursuant to section 11 of the Act of Congress, approved September 7, 1916, designated by the statutory name "Shipping Act, 1916", and existing under and by virtue of the laws for the District of Columbia and more than one-half of the capital stock of which is owned by the government of the United States, and said plaintiff claims of said defendant Seven million, six hundred ninety-one thousand four hundred dollars and fourteen cents ($7,691,400.14)

with interest as hereinafter stated upon its causes of action, in which the matter in controversy exceeds, exclusive of interest and costs, the sum of Three thousand dollars ($3,000), whereof, upon information and belief, the following is a true statement to wit:

FIRST CAUSE OF ACTION.

(Contract 177 S. C.)

Second: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of twelve steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 1-A, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Third: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred ten thousand dollars ($210,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated

cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million one hundred twenty thousand dollars ($2,120,000).

Fourth: In and by the provisions of Article XXVIII of said contract the defendant agreed that, in order to provide the plaintiff with two additional shipways, with the necessary cranes and other appliances, additional wharves, buildings, including shop and office buildings, compressor plant, tools and other equipment necessary to construct said vessels (in said contract referred to as the special improvements, tools and equipment), it would deposit with a depositary or depositaries, designated by the plaintiff and approved by the defendant, from time to time as requested by the plaintiff, up to the sum of One million dollars ($1,000,000), the amount so deposited to be used to pay the cost of said special improvements, tools and equipment, including cost of labor, cost of superintendence and other charges in connection therewith, all in the manner and as provided in said Article. On or about the 25th day of April, 1918, the plaintiff and the defendant made and entered into a contract in writing a copy of which, marked Exhibit 1-B, is hereto attached and made a part of this statement, amending said Article XXVIII of said contract to provide for the sale

posit by the defendant and use by the plaintiff as aforesaid of One million five hundred thousand dollars ($1,500,000) instead of One million dollars ($1,000,000). On or about the 17th day of July, 1918, the plaintiff and the defendant made and entered into a further contract in writing a copy of which, marked Exhibit 1-C, is hereto attached and made a part of this statement, whereby the defendant agreed to deposit an additional sum of Fifty thousand dollars ($50,000) to be expended in the manner in said Article provided, making the total amount agreed to be deposited by the defendant for use by the plaintiff to pay the cost of said special improvements, tools and equipment, One million five hundred and fifty thousand dollars ($1,550,000).

Fifth: The plaintiff completed said twelve steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract, Exhibit 1-A hereto, and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before July 21, 1920, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of all said contracts on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract, Exhibit 1-A hereto.

Sixth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided

by the schedule referred to in said Article XIX of said contract, Exhibit 1-A hereto, as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Two million five hundred eight thousand five hundred two dollars and eleven cents ($2,508,502.11).

Seventh: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract, Exhibit 1-A hereto, ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Sixty thousand four hundred ninety-five dollars and twenty-eight cents ($60,495.28).

Eighth: The revised estimated cost of said twelve vessels revised in accordance with the provisions of said contract, Exhibit 1-A hereto, was Twenty-eight million eight thousand nine hundred ninety-seven dollars and thirty-nine cents ($28,008,997.39), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (12 times $2,120,000)	$25,440,000.00
Add aggregate increases in labor cost actually paid as aforesaid	2,508,502.11
Add net cost of said changes in said plans and specifications as aforesaid	60,495.28
Total revised estimated cost	$28,008,997.39

Ninth: While engaged in the work of constructing said vessels the plaintiff, at the direction and with the approval of the defendant and in accordance with the terms and provisions of said contract, Exhibit 1-A hereto, and of said contracts Exhibits 1-B and 1-C hereto, constructed and provided said special improvements, tools and equipment at a total cost to the plaintiff of more than One million five hundred fifty thousand dollars ($1,550,000).

Tenth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, Exhibit 1-A hereto, and of the cost of said special improvements, tools and equipment, was made by the defendant and completed on or about the first day of September, 1922.

Eleventh: The total actual cost of constructing said vessels as defined in Article XVII of said contract, Exhibit 1-A hereto, was Twenty-two million four hundred sixty-nine thousand two hundred forty-three dollars and eighty-five cents ($22,469,243.85), after crediting the salvage value of scrap,

waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Twelfth. The aggregate amount of the various items of cost and expenditures incurred by the plaintiff in the construction and providing of said special improvements, tools and equipment was in excess of One million five hundred fifty thousand dollars ($1,550,000).

Thirteenth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract, Exhibit 1-A hereto, became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Fifty-three thousand eight hundred fifty-nine dollars and sixty-three cents ($53,859.63). By reason thereof the actual cost of said vessels, to wit, Twenty-two million four hundred sixty-nine thousand two hundred forty-three dollars and eighty-five cents ($22,469,243.85), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Fifty-three thousand eight hundred fifty-nine dollars and sixty-three cents ($53,859.63) or to the sum of Twenty-two million four hundred fifteen thousand three hundred eighty-four dollars and twenty-two cents ($22,415,384.22).

Fourteenth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract, Exhibit 1-A hereto, as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Thirteenth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Five million five hundred ninety-three thousand six hundred thirteen dollars and seventeen cents ($5,593,613.17), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Eleventh hereof.

Fifteenth: Upon the construction and providing of said special improvements, tools and equipment and the completion, delivery and acceptance of said twelve vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-fifth cause of action herein) the sum of Seven hundred forty-four thousand nine hundred ninety-eight dollars and thirty-six cents ($744,998.36), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$22,469,243.85
The fixed sum for profit specified in said Article XIX of said contract, Exhibit 1-A hereto, (12 times $210,000)	2,520,000.00

One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Thirteenth hereof (i.e. $22,415,384.22), is less than said revised estimated cost (i.e. $28,008,997.39), such one-half of said amount being not less than		$2,796,806.58
By reason of said expenditures for said special improvements, tools and equipment, at least		1,550,000.00
Total amount which became payable from the defendant to the plaintiff under said contracts	$29,336,050.43	
Deduct aggregate of payments made under said contracts prior to the date of completion of said audit	28,591,052.07	
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff		$744,998.36

Sixteenth: No part of said sum of Seven hundred forty-four thousand nine hundred ninety-eight dollars and thirty-six cents ($744,998.36) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SECOND CAUSE OF ACTION.

(Contract 178 S. C.)

Seventeenth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Wilmington, Delaware, referred to in said contract, of three steel tank vessels and three cargo vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 2-A, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Eighteenth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said Article, One hundred sixty thousand dollars ($160,000) for each such steel tank vessel and One hundred twenty-five thousand dollars ($125,000) for each such cargo vessel, plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article,

by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is One million six hundred twelve thousand dollars ($1,612,000) and of each of said cargo vessels is One million three hundred fifty thousand dollars ($1,350,000).

Nineteenth: In and by the provisions of Article XXVIII of said contract the defendant agreed that, in order to provide the plaintiff with funds to pay for certain extensions of ways and miscellaneous tools and plant equipment necessary to carry on the work under said contract, it would deposit in its name in advance in such bank or banks as might be determined upon, in an account separate from the account in Article XV of said contract described, One hundred twenty-five thousand dollars ($125,000), said sum to be drawn upon in the manner provided in said Article XXVIII to pay the cost of said extensions and of said tools and equipment. On or about the 20th day of June, 1918, the plaintiff and the defendant made and entered into a second contract in writing supplementing said Article XXVIII a copy of which, marked Exhibit 2-B, is hereto attached and made a part of this statement, whereby the defendant agreed that, in order to provide the plaintiff with funds to pay the cost of installation and rearrangement of lights and lighting equipment and for the extension of tracks and the purchase of

an electrically driven storage-battery tractor at said shipyard, it would deposit in its name in such bank or banks as might be determined upon, an additional sum of Sixteen thousand dollars ($16,000) to be expended in the manner and subject to the terms and conditions provided in said Article XXVIII, making the total amount agreed to be deposited by the defendant for use by the plaintiff to pay the cost of said extensions, tools, equipment, and installations, One hundred forty-one thousand dollars ($141,000).

Twentieth: The plaintiff completed said three steel tank vessels and said three cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract, Exhibit 2-A hereto, and delivered said vessels complete to the defendant afloat at said shipyard at Wilmington, Delaware, on or before December 31, 1920, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of all said contracts on its part to be performed, and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract, Exhibit 2-A hereto.

Twenty-first: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract, Exhibit 2-A hereto, as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said

vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million three hundred thirty-one thousand one hundred eighty-three dollars and seventeen cents ($1,331,183.17).

Twenty-second: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract, Exhibit 2-A hereto, ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated One hundred eighty-eight thousand nine hundred and fifty-nine dollars ($188,959).

Twenty-third: The revised estimated cost of said three steel tank vessels and said three cargo vessels, revised in accordance with the provisions of said contract, Exhibit 2-A hereto, was Ten million four hundred six thousand one hundred forty-two dollars and seventeen cents ($10,406,142.17), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,612,000 plus 3 times $1,350,000)	$8,886,000.00
Add aggregate increases in labor cost actually paid as aforesaid	1,331,183.17
Add net cost of said changes in said plans and specifications as aforesaid	188,959.00
Total revised estimated cost	$10,406,142.17

Twenty-fourth: While engaged in the work of constructing said vessels the plaintiff, at the direction and with the approval of the defendant and in accordance with the terms and provisions of said contract, Exhibit 2-A hereto, and of said contract Exhibit 2-B hereto, constructed said extensions and provided said tools, equipment and installations in paragraph Nineteenth hereof mentioned at a total cost to the plaintiff of more than One hundred forty-one thousand dollars ($141,000).

Twenty-fifth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, Exhibit 2-A hereto, and of the cost of said extensions, tools, equipment and installations was made by the defendant and completed on or about the first day of September, 1922.

Twenty-sixth: The total actual cost of constructing said three steel tank vessels and said three cargo vessels as defined in Article XVII of said contract,

Exhibit 2-A hereto, was Nine million nine hundred ninety-three thousand three hundred seventy-five dollars and twenty-six cents ($9,993,375.26), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Twenty-seventh: The aggregate amount of the various items of cost and expenditures incurred by the plaintiff in the construction of said extensions and in providing said tools, equipment and installations was in excess of One hundred forty-one thousand dollars ($141,000).

Twenty-eighth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract, Exhibit 2-A hereto, became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Thirty-four thousand four hundred fifty-two dollars and eighty-four cents ($34,452 84). By reason thereof the actual cost of said vessels, to wit, Nine million nine hundred ninety-three thousand three hundred seventy-five dollars and twenty-six cents ($9,993,375.26) was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Thirty-four thousand four

hundred fifty-two dollars and eighty-four cents ($34,452.84) or to the sum of Nine million nine hundred fifty-eight thousand nine hundred twenty-two dollars and forty-two cents ($9,958,922.42).

Twenty-ninth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract, Exhibit 2-A hereto, as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Twenty-eighth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Four hundred forty-seven thousand two hundred nineteen dollars and seventy-five cents ($447,219.75), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Twenty-sixth hereof.

Thirtieth: Upon the construction of said extensions and the providing of said tools, equipment and installations and the completion, delivery and acceptance of said three steel tank vessels and said three cargo vessels as aforesaid, and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-sixth cause of action herein) the sum of Three hundred eighty-five thousand four hundred sixty-three dollars and eighty-seven cents ($385,463.87), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$ 9,993,375.26	
The fixed sum for profit specified in said Article XIX of said contract, Exhibit 2-A hereto, (3 times $160,000 plus 3 times $125,000)	855,000.00	
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Twenty-eighth hereof (i. e. $9,958,922.42), is less than said revised estimated cost (i. e. $10,406,142.17), such one-half of said amount being not less than	223,609.87	
By reason of said expenditures for said extensions, tools, equipment and installations, at least	141,000.00	
Total amount which became payable from the defendant to the plaintiff under said contracts		$11,212,985.13
Deduct, aggregate of payments made under said contracts prior to the date of completion of said audit		10,827,521.26
Total amount (exclusive of the aforesaid damages) due from		

the defendant to the plaintiff ..... $. 385,463.87

Thirty-first: No part of said sum of Three hundred eighty-five thousand four hundred sixty-three dollars and eighty-seven cents ($385,463.87) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

THIRD CAUSE OF ACTION

(Contract 179 S. C.)

Thirty-second: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 3, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Thirty-third: In and by the provisions of Article XIX of said contract the defendant agreed to pay

for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred thousand dollars ($200,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million seventy thousand dollars ($2,070,000).

Thirty-fourth: The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before June 14, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Thirty-fifth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Eight hundred fifty-one thousand four hundred thirty-six dollars and thirty-eight cents ($851,436.38).

Thirty-sixth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Twenty-four thousand three hundred and twenty-eight dollars ($24,328).

Thirty-seventh: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Seven million eighty-five thousand seven hundred sixty-four dollars and thirty-eight cents ($7,085,764.38), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $2,070,000)	$6,210,000.00
Add aggregate increases in labor cost actually paid as aforesaid	851,436.38
Add net cost of said changes in said plans and specifications as aforesaid	24,328.00
Total revised estimated cost	$7,085,764.38

Thirty-eighth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Thirty-ninth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Five million five hundred fifty-six thousand three hundred thirty dollars and forty-one cents ($5,556,330.41), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Fortieth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Three thousand seven hundred eighty-five dollars and thirty-four cents ($3,785.34). By reason thereof the actual cost of said vessels, to wit, Five million five hundred fifty-six thousand three hundred thirty dollars and forty-one cents ($5,556,330.41), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Three thousand seven hundred eighty-five dollars and thirty-four cents ($3,785.34) or to the sum of Five million five hundred fifty-two thousand five hundred forty-five dollars and seven cents ($5,552,545.07).

Forty-first: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Fortieth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million five hundred thirty-three thousand two hundred nineteen dollars and thirty-one cents ($1,533,219.31), which

amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Thirty-ninth hereof.

Forty-second: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-seventh cause of action herein) the sum of Two hundred ten thousand five hundred thirty-one dollars and twenty-one cents ($210,531.21), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$5,556,330.41
The fixed sum for profit specified in said Article XIX of said contract (3 times $200,000)	600,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Fortieth hereof (i. e. $5,552,545.07), is less than said revised estimated cost (i. e. $7,085,764.38), such one-half of said amount being not less than	766,609.65
Total amount which became pay-	

able from the defendant to the plaintiff under said contract.	
Forwarded	$6,922,940.06
Brought Forward	$6,922,940.06
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	6,712,408.85
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$ 210,531.21

Forty-third: No part of said sum of Two hundred ten thousand five hundred thirty-one dollars and twenty-one cents ($210,531.21) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FOURTH CAUSE OF ACTION

(Contract 182 S. C.)

Forty-fourth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of two troop ships in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the ves-

sels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 4, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Forty-fifth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder, including authorized changes therein as in said contract provided, the actual cost to the plaintiff of constructing such vessel determined as in Article XVII of said contract provided, plus the sum for profit equal to ten per cent. (10%) of the amount of such cost. The defendant also agreed that upon the completion of said vessels a complete audit of the cost thereof would be made by the defendant and that thereupon the balance determined to be due to the plaintiff should become immediately due and payable.

Forty-sixth: Thereupon the plaintiff entered upon the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications. Thereafter, and on or about the 5th day of April, 1919, the plaintiff and defendant modified said contract so as to provide thereby that said vessels should be completed as combined passenger and cargo vessels in accordance with instructions to be issued by the defendant. Thereafter the defendant issued such instructions and the plaintiff completed said two vessels as combined passenger and cargo vessels in accordance with said plans and specifications with the changes

directed by the defendant as aforesaid and with certain other changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before April 30, 1921, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract as so modified on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract as so modified.

Forty-seventh: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels was made by the defendant and completed on or about the first day of September, 1922.

Forty-eighth: The total actual cost of constructing said two vessels as defined in Article XVII of said contract was Eleven million three hundred fifty-four thousand two hundred fifty-eight dollars and twenty-six cents ($11,354,258.26), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Forty-ninth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of

which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the sum for profit to be paid to the plaintiff were delivered by the plaintiff to the defendant and were of the value of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-seven cents ($152,598.37). By reason thereof the actual cost of said vessels, to wit, Eleven million three hundred fifty-four thousand two hundred fifty-eight dollars and twenty-six cents ($11,354,258.26), was for the purpose of determining the sum for profit to be allowed on the construction of said vessels reduced by said sum of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-seven cents ($152,598.37) or to the sum of Eleven million two hundred one thousand six hundred fifty-nine dollars and eighty-nine cents ($11,201,659.89).

Fiftieth: Upon the completion, delivery and acceptance of said two vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-eighth cause of action herein) the sum of One hundred seventy-eight thousand nine hundred eighty-nine dollars and three cents ($178,989.03), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$11,354,258.26
The sum for profit specified in said Article XIX of said contract (10% of the amount of the actual cost of said vessels de-	

creased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Forty-ninth hereof, to wit, 10% of $11,201,659.89)	1,120,165.99
Total amount which became payable from the defendant to the plaintiff under said contract	$12,474,424.25
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	12,295,435.22
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$178,989.03

Fifty-first: No part of said sum of One hundred seventy-eight thousand nine hundred eighty-nine dollars and three cents ($178,989.03) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FIFTH CAUSE OF ACTION

(Contract 183 S. C.)

Fifty-second: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at

Fore River, Massachusetts, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 5, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Fifty-third: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of One hundred eighty-five thousand dollars ($185,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is One million eight hundred sixty-five thousand dollars ($1,865,000).

Fifty-fourth: The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Fore River, Massachusetts, on or before September 19, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Fifty-fifth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Seven hundred

seventy-six thousand six hundred thirty-nine dollars and twenty cents ($776,639.20).

Fifty-sixth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was diminished by reason of said changes, as found on said audit, aggregated Twelve thousand seven hundred and ninety-one dollars ($12,791).

Fifty-seventh: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Six million three hundred fifty-eight thousand eight hundred forty-eight dollars and twenty cents ($6,358,848.20), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,865,000)	$5,595,000.00
Add aggregate increases in labor cost actually paid as aforesaid	776,639.20
Deduct net cost of said changes in said plans and specifications as aforesaid	12,791.00
Total revised estimated cost	$6,358,848.20

Fifty-eighth: After the completion and delivery by the plaintiff of said vessels and the acceptance

thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Fifty-ninth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Five million three hundred fourteen thousand four hundred forty-eight dollars and sixty-six cents ($5,314,448.66), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Sixtieth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Nineteen thousand nine hundred sixty-five dollars and forty-four cents ($19,965.44). By reason thereof the actual cost of said vessels, to wit, Five million three hundred fourteen thousand four hundred forty-eight dollars and sixty-six cents ($5,314,448.66), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Nineteen

thousand nine hundred sixty-five dollars and forty-four cents ($19,965.44) or to the sum of Five million two hundred ninety-four thousand four hundred eighty-three dollars and twenty-two cents ($5,294,483.22).

Sixty-first: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Sixtieth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of changes and the net cost of said changes in said plans and specifications is not less than One million sixty-four thousand three hundred sixty-four dollars and ninety-eight cents ($1,064,364.98), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Fifty-ninth hereof.

Sixty-second: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-ninth cause of action herein) the sum of One hundred thirty-one thousand two hundred seven dollars and nine cents ($131,207.09), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$5,314,448.66

The fixed sum for profit specified in said Article XIX of said contract (3 times $185,000)	555,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Sixtieth hereof (i. e. $5,294,483.22), is less than said revised estimated cost (i. e. $6,358,848.20), such one-half of said amount being not less than	532,182.49
Total amount which became payable from the defendant to the plaintiff under said contract:	
Forwarded	$6,401,631.15
Brought Forward	$6,401,631.15
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	6,270,424.06
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$131,207.09

Sixty-third: No part of said sum of One hundred thirty-one thousand two hundred seven dollars and nine cents ($131,207.09) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SIXTH CAUSE OF ACTION

(Contract 191 S. C.)

Sixty-fourth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of four steel cargo vessels (in said contract denominated Hull Nos. 150, 151, 153 and 170) in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 6, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Sixty-fifth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said contract, Two hundred twelve thousand four hundred dollars ($212,400) each for said vessels, Hull Nos. 150 and 153, Two hundred ten thousand six hundred dollars ($210,600) for said vessel, Hull No. 151, and Two Hundred sixteen thousand dollars ($216,000) for said vessel, Hull No. 170, plus one-half of the sum by which such actual cost should be less than an estimated cost

specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of or with the approval of the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated costs of said vessels specified in said Article XIX are: Two million one hundred twenty-four thousand dollars ($2,124,000) for each of said vessels, Hull Nos. 150 and 153, Two million one hundred six thousand dollars ($2,106,000) for said vessel, Hull No. 151, and Two million one hundred sixty thousand dollars ($2,160,000) for said vessel, Hull No. 170.

Sixty-sixth: The plaintiff completed said four steel cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before May 8, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Sixty-seventh: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construc-

tion thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Six hundred twenty-one thousand nine hundred forty-seven dollars and seventeen cents ($621,947.17).

Sixty-eighth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated One hundred three thousand seven hundred sixty dollars and fifty-two cents ($103,760.52).

Sixty-ninth: The revised estimated cost of said four vessels revised in accordance with the provisions of said contract was Nine million two hundred thirty-nine thousand seven hundred seven dollars

and sixty-nine cents ($9,239,707.69), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract	$8,514,000.00
Add aggregate increases in labor cost actually paid as aforesaid	621,947.17
Add net cost of said changes in said plans and specifications as aforesaid	103,760.52
Total revised estimated cost	$9,239,707.69

Seventieth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Seventy-first: The total actual cost of constructing said four vessels as defined in Article XVII of said contract was Six million three hundred fifty-four thousand one hundred sixty-three dollars and fifty-three cents ($6,354,163.53), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Seventy-second: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions

of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Three thousand eight hundred sixty-nine dollars and thirty-seven cents ($3,869.37). By reason thereof the actual cost of said vessels, to wit, Six million three hundred fifty-four thousand one hundred sixty-three dollars and fifty-three cents ($6,354,163.53), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Three thousand eight hundred sixty-nine dollars and thirty-seven cents ($3,869.37) or to the sum of Six million three hundred fifty thousand two hundred ninety-four dollars and sixteen cents ($6,350,294.16).

Seventy-third: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Seventy-second hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Two million eight hundred eighty-nine thousand four hundred thirteen dollars and fifty-three cents ($2,889,413.53), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the

amount of the actual cost thereof alleged by the plaintiff in paragraph Seventy-first hereof.

Seventy-fourth: Upon the completion, delivery and acceptance of said four vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirtieth cause of action herein) the sum of Three hundred seventy-eight thousand two hundred sixty-nine dollars and eighteen cents ($378,269.18), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$6,354,163.53
The fixed sum for profit specified in said Article XIX of said contract	851,400.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Seventy-second hereof (i. e. $6,350,294.16), is less than said revised estimated cost (i. e. $9,239,707.69), such one-half of said amount being not less than	1,444,706.76
Total amount which became payable from the defendant to the plaintiff under said contract	$8,650,270.29
Deduct aggregate of payments made under said contract prior	

to the date of completion of said audit	8,272,001.11
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$378,269.18

Seventy-fifth: No part of said sum of Three hundred seventy-eight thousand two hundred sixty-nine dollars and eighteen cents ($378,269.18) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SEVENTH CAUSE OF ACTION

(Contract 196 S. C.)

Seventy-sixth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of one steel cargo vessel in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessel as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 7, is hereto attached and made a part of this statement

and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Seventy-seventh: In and by the provisions of Article XIX of said contract the defendant agreed to pay for the vessel to be constructed thereunder the actual cost to the plaintiff of constructing said vessel plus the fixed sum for profit of One hundred twenty-nine thousand five hundred dollars ($129,500), plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of said vessel specified in said Article XIX is One million two hundred ninety-five thousand dollars ($1,295,000).

Seventy-eighth: The plaintiff completed said steel cargo vessel in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessel complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before September 27, 1918, and the defendant thereupon took possession of and accepted said vessel. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessel as

constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Seventy-ninth: While the plaintiff was engaged in the work of constructing said vessel, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessel was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessel. The aggregate amount by which the labor cost of said vessel actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One hundred thirty-two thousand three hundred eighteen dollars and seventy-three cents ($132,318.73).

Eightieth: From time to time while the plaintiff was engaged in the work of constructing said vessel the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessel specified in said Article XIX of said contract was increased by reason of said

changes, as found on said audit, aggregated Five thousand nine hundred forty dollars and eleven cents ($5,940.11).

Eighty-first: The revised estimated cost of said vessel revised in accordance with the provisions of said contract was One million four hundred thirty-three thousand two hundred fifty-eight dollars and eighty-four cents ($1,433,258.84), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract	$1,295,000.00
Add aggregate increases in labor cost actually paid as aforesaid	132,318.73
Add net cost of said changes in said plans and specifications as aforesaid	5,940.11
Total revised estimated cost	$1,433,258.84

Eighty-second: After the completion and delivery by the plaintiff of said vessel and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessel and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Eighty-third: The total actual cost of constructing said vessel as defined in Article XVII of said contract was One million one hundred twenty-three thousand seven hundred eighty-two dollars and eight cents ($1,123,782.08), after crediting the salvage value of scrap, waste containers, etc., originally

purchased for said vessel and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Eighty-fourth: The amount by which said actual cost of said vessel determined in accordance with the provisions of Article XVII of said contract as aforesaid is less than the estimated cost of said vessel revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Three nundred nine thousand four hundred seventy-six dollars and seventy-six cents ($309,476.76), which amount will be increased in the event, and to the extent, that the actual cost of said vessel shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Eighty-third hereof.

Eighty-fifth: Upon the completion, delivery and acceptance of said vessel as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-first cause of action herein) the sum of Thirty-seven thousand one hundred forty dollars and forty-six cents ($37,140.46), determined as follows:

The total actual cost of constructing said vessel as aforesaid	$1,123,782.08
The fixed sum for profit specified in said Article XIX of said contract	129,500.00
One-half of the amount by which the total actual cost of said vessel (i e. $1,123,782.08) is less than said revised estimated cost	

(i. e. $1,433,258.84), such one-half of said amount being not less than	$ 154,738.38
Total amount which became payable from the defendant to the plaintiff under said contract	$1,408,020.46
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	1,370,880.00
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$37,140.46

Eighty-sixth: No part of said sum of Thirty-seven thousand one hundred forty dollars and forty-six cents ($37,140.46) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

EIGHTH CAUSE OF ACTION

(Contract 226 S. C.)

Eighty-seventh: On or about the eighteenth day of March, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of four steel tank vessels and three cargo vessels in accordance with the terms and provisions of said contract and the

plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 8, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Eighty-eighth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said Article, Two hundred thousand dollars ($200,000) for each such tank vessel and One hundred twenty-five thousand dollars ($125,000) for each such cargo vessel; plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is Two million dollars ($2,000,000), and of each of said cargo vessels is One million two hundred ninety-five thousand dollars ($1,295,000).

Eighty-ninth: The plaintiff completed said four steel tank vessels and said three cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before November 20, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Ninetieth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million nine hundred

sixty-nine thousand one hundred forty-eight dollars and eighty-five cents ($1,969,148.85).

Ninety-first: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated One hundred twenty-four thousand four hundred and two dollars ($124,402).

Ninety-second: The revised estimated cost of said four steel tank vessels and said three cargo vessels revised in accordance with the provisions of said contract was Thirteen million nine hundred seventy-eight thousand five hundred fifty dollars and eighty-five cents ($13,978,550.85), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (4 times $2,000,000 plus 3 times $1,295,000)	$11,885,000.00
Add aggregate increases in labor cost actually paid as aforesaid	1,969,148.85
Add net cost of said changes in said plans and specifications as aforesaid	124,402.00
Total revised estimated cost	$13,978,550.85

Ninety-third: After the completion and delivery by the plaintiff of said vessels and the acceptance

thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Ninety-fourth: The total actual cost of constructing said four steel tank vessels and said three cargo vessels as defined in Article XVII of said contract was Ten million nine hundred four thousand five hundred forty-seven dollars and eighty-two cents ($10,904,547.82), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Ninety-fifth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Thirteen thousand one hundred eighteen dollars and seventy seven cents ($13,118.77). By reason of the delivery thereof to the defendant as aforesaid the actual cost of said vessels, to wit, Ten million nine hundred four thousand five hundred forty-seven dollars and eighty-two cents ($10,904,547.82), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with

the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Thirteen thousand one hundred eighteen dollars and seventy-seven cents ($13,118.77) or to the sum of Ten million eight hundred ninety-one thousand four hundred twenty-nine dollars and five cents ($10,891,429.05).

Ninety-sixth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Ninety-fifth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Three million eighty-seven thousand one hundred twenty-one dollars and eighty cents ($3,087,121.80), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Ninety-fourth hereof.

Ninety-seventh: Upon the completion, delivery and acceptance of said four steel tank vessels and said three cargo vessels as aforesaid, and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-second cause of action herein) the sum of Five hundred seventy-eight thousand seven hundred two dollars and thirty-five cents ($578,702.35), determined as follows:

The total actual cost of constructing said vessels as aforesaid.	$10,904,547.82	
The fixed sum for profit specified in said Article XIX of said contract (4 times $200,000 plus 3 times $125,000)	1,175,000.00	
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Ninety-fifth hereof (i. e. $10,891,429.05), is less than said revised estimated cost (i. e. $13,978,550.85), such one-half of said amount being not less than	1,543,560.90	
Total amount which became payable from the defendant to the plaintiff under said contract	$13,623,108.72	
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	13,044,406.37	
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$578,702.35	

Ninety-eighth: No part of said sum of Five hundred seventy-eight thousand seven hundred two dollars and thirty-five cents ($578,702.35) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff

with interest thereon from the first day of September, 1922.

NINTH CAUSE OF ACTION.

(Contract 230 S. C.)

Ninety-ninth: On or about the twenty-second day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of two steel cargo vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 9, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundredth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred seven thousand five hundred dollars ($207,500) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as

provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million seventy-five thousand dollars ($2,075,000).

One Hundred First: The plaintiff completed said two steel cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before June 30, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Second: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been

incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Three hundred thirty-six thousand two hundred twenty-one dollars and ninety cents ($336,221.90).

One Hundred Third: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Seventeen thousand six hundred four dollars and twenty cents ($17,604.20).

One Hundred Fourth: The revised estimated cost of said two vessels revised in accordance with the provisions of said contract was Four million five hundred three thousand eight hundred twenty-six dollars and ten cents ($4,503,826.10), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (2 times $2,075,000)	$4,150,000.00

Add aggregate increases in labor cost actually paid as aforesaid	336,221.90
Add net cost of said changes in said plans and specifications as aforesaid	17,604.20
Total revised estimated cost	$4,503,826.10

One Hundred Fifth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Sixth: The total actual cost of constructing said two vessels as defined in Article XVII of said contract was Three million two hundred nineteen thousand six hundred seventeen dollars and thirty cents ($3,219,617.30), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Seventh: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the

value of Twenty-six thousand four hundred thirty-three dollars and eighty-two cents ($26,433.82). By reason thereof the actual cost of said vessels, to wit, Three million two hundred nineteen thousand six hundred seventeen dollars and thirty cents ($3,219,617.30), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Twenty-six thousand four hundred thirty-three dollars and eighty-two cents ($26,433.82) or to the sum of Three million one hundred ninety-three thousand one hundred eighty-three dollars and forty-eight cents ($3,193,183.48).

One Hundred Eighth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One Hundred Seventh hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million three hundred ten thousand six hundred forty-two dollars and sixty-two cents ($1,310,642.62), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Sixth hereof.

One Hundred Ninth: Upon the completion, delivery and acceptance of said two vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of

the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-third cause of action herein) the sum of Two hundred twelve thousand seven hundred eleven dollars and thirteen cents ($212,711.13), determined as follows:

The total actual cost of constructing said vessels as aforesaid		$3,219,617.30
The fixed sum for profit specified in said Article XIX of said contract (2 times $207,500)		415,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One Hundred Seventh hereof (i. e. $3,193,183.48), is less than said revised estimated cost (i. e. $4,503,826.10), such one-half of said amount being not less than		655,321.31
Total amount which became payable from the defendant to the plaintiff under said contract	$4,289,938.61	
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	4,077,227.48	
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff		$212,711.13

One Hundred Tenth: No part of said sum of Two hundred twelve thousand seven hundred eleven dollars and thirteen cents ($212,711.13) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

TENTH CAUSE OF ACTION.

(Contract 299 S. C.)

One Hundred Eleventh: On or about the thirtieth day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Fore River, Massachusetts, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications) marked Exhibit 10, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Twelfth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of One

hundred eighty-five thousand dollars ($185,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is One million eight hundred fifty thousand dollars ($1,850,000).

One Hundred Thirteenth: The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Fore River, Massachusetts, on or before December 22, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Fourteenth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction

of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Six hundred thirty-five thousand three hundred forty-nine dollars and thirty-six cents ($635,349.36).

One Hundred Fifteenth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was diminished by reason of said changes, as found on said audit, aggregated Ten thousand five hundred and eighty-one dollars ($10,581).

One Hundred Sixteenth: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Six million one hundred seventy-four thousand seven hundred six-

ty-eight dollars and thirty-six cents ($6,174,768.36), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,850,000)	$5,550,000.00
Add aggregate increases in labor cost actually paid as aforesaid	635,349.36
Deduct net cost of said changes in said plans and specifications as aforesaid	10,581.00
Total revised estimated cost	$6,174,768.36

One Hundred Seventeenth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Eighteenth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Four million eight hundred seventy-three thousand nine hundred fifty-seven dollars and forty-six cents ($4,873,957.46), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Nineteenth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the pro-

visions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Eighteen thousand five hundred sixteen dollars and twenty-two cents ($18,516.22). By reason thereof the actual cost of said vessels, to wit, Four million eight hundred seventy-three thousand nine hundred fifty-seven dollars and forty-six cents ($4,873,957.46), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Eighteen thousand five hundred sixteen dollars and twenty-two cents ($18,516.22) or to the sum of Four million eight hundred fifty-five thousand four hundred forty-one dollars and twenty-four cents ($4,855,441.24).

One Hundred Twentieth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One Hundred Nineteenth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million three hundred nineteen thousand three hundred twenty-seven dollars and twelve cents ($1,319,327.12), which amount will be increased, in the event, and to the extent, that the

actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Eighteenth hereof.

One Hundred Twenty-first: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-fourth cause of action herein) the sum of Two hundred twelve thousand six hundred sixty-eight dollars and six cents ($212,668.06), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$4,873,957.46
The fixed sum for profit specified in said Article XIX of said contract (3 times $185,000)	555,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One Hundred Nineteenth hereof (i. e. $4,855,441.24), is less than said revised estimated cost (i. e. $6,174,768.36), such one-half of said amount being not less than	659,663.56
Total amount which became payable from the defendant to the plaintiff under said contract	$6,088,621.02

Deduct aggregate of payments made under said contract prior to the date of completion of said audit	5,875,952.96
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$212,668.06

One Hundred Twenty-second: No part of said sum of Two hundred twelve thousand six hundred sixty-eight dollars and six cents ($212,668.06) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

ELEVENTH CAUSE OF ACTION

(Contract 300 S. C.)

One Hundred Twenty-third: On or about the thirtieth day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 11, is hereto at-

tached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Twenty-fourth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred thousand dollars ($200,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million dollars ($2,000,000).

One Hundred Twenty-fifth. The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before July 20, 1920, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed

and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Twenty-sixth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth the sum of Eight hundred ninety-nine thousand nine hundred eleven dollars and sixty-seven cents ($899,911.67).

One Hundred Twenty-seventh: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by

which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Forty-one thousand and thirty-nine dollars ($41,039).

One Hundred Twenty-eighth: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Six million nine hundred forty thousand nine hundred fifty dollars and sixty-seven cents ($6,940,950.67), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $2,000,000)	$6,000,000.00
Add aggregate increases in labor cost actually paid as aforesaid	899,911.67
Add net cost of said changes in said plans and specifications as aforesaid	41,039.00
Total revised estimated cost	$6,940,950.67

One Hundred Twenty-ninth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Thirtieth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Five million one hundred twenty-five thousand fifty-three dollars and twenty-

three cents ($5,125,053.23), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Thirty-first: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Two thousand four hundred sixty-five dollars and thirty six cents ($2,465.36). By reason thereof the actual cost of said vessels, to wit, Five million one hundred twenty-five thousand fifty-three dollars and twenty-three cents ($5,125,053.23), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Two thousand four hundred sixty-five dollars and thirty-six cents ($2,465.36) or to the sum of Five million one hundred twenty-two thousand five hundred eighty-seven dollars and eighty-seven cents ($5,122,587.87).

One Hundred thirty-second: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in para-

graph One Hundred Thirty-first hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million eight hundred eighteen thousand three hundred sixty-two dollars and eighty cents ($1,818,362.80), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Thirtieth hereof.

One Hundred Thirty-third: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-fifth cause of action herein) the sum of Two hundred sixty thousand three hundred ninety-four dollars and eight cents ($260,394.08), determined as follows:

The total actual cost of constructing said vessels as aforesaid		$5,125,053.23
The fixed sum for profit specified in said Article XIX of said contract (3 times $200,000)		600,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One		

Hundred Thirty-first hereof (i. e. $5,122,587.87), is less than said revised estimated cost (i. e. $6,940,950.67), such one-half of said amount being not less than	909,181.40
Total amount which became payable from the defendant to the plaintiff under said contract	$6,634,234.63
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	6,373,840.55
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$260,394.08

One Hundred Thirty-fourth: No part of said sum of Two hundred sixty thousand three hundred ninety-four dollars and eight cents ($260,394.08) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

TWELFTH CAUSE OF ACTION

(Contract 301 S. C.)

One Hundred Thirty-fifth: On or about the thirtieth day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of six steel

tank vessels and six cargo vessels (denominated by the defendant Hull Nos. 1676-1687, inclusive, and hereafter in this cause of action sometimes referred to by said numbers) in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 12, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Thirty-sixth: In and by the provision of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said Article, Two hundred ten thousand dollars ($210,000) for each such tank vessel and Two hundred seven thousand five hundred dollars ($207,500) for each such cargo vessel, plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or speci-

fications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is Two million one hundred thousand dollars ($2,100,000), and of each of said cargo vessels is Two million seventy-five thousand dollars ($2,075,000).

One Hundred Thirty-seventh: Thereafter and on or about February 11, 1919, the defendant directed the plaintiff to suspend work on three of said steel tank vessels, Hull Nos. 1679, 1680, and 1681, and three of said cargo vessels, Hull Nos. 1685, 1686, and 1687. On or about August 19, 1919, the defendant directed the plaintiff to cancel said contract as to said three cargo vessels, and on or about November 4, 1919, notified the plaintiff to resume work on said three steel tank vessels.

One Hundred Thirty-eighth: The plaintiff completed said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before July 22, 1921, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Thirty-ninth: While the plaintiff was engaged in the work of constructing said six

steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million five hundred thirty-one thousand nine hundred sixty-seven dollars and sixty-two cents ($1,531,967.62).

One Hundred Fortieth: From time to time while the plaintiff was engaged in the work of constructing said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Forty-six thousand five hundred thirty-two dollars and three cents ($46,532.03).

One Hundred Forty-first: The revised estimated cost of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, revised in accordance with the provisions of said contract was Twenty million four hundred three thousand four hundred ninety-nine dollars and sixty-five cents ($20,403,499.65), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (6 times $2,100,000 plus 3 times $2,075,000)	$18,825,000.00
Add aggregate increases in labor cost actually paid as aforesaid	1,531,967.62
Add net cost of said changes in said plans and specifications as aforesaid	46,532.03
Total revised estimated cost	$20,403,499.65

One Hundred Forty-second: After the completion and delivery by the plaintiff of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Forty-third: The total actual cost of constructing said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, as defined in Article XVII of said contract was Fifteen million three hundred forty-six thousand eight hundred seventy-one dollars and seventy-three cents ($15,346,

871.73), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Forty-fourth: In the partial construction of said three canceled cargo vessels, Hull Nos. 1685-1687, the plaintiff incurred actual costs prior to the cancelation thereof in the amount of Six hundred ninety-nine thousand seven hundred forty-six dollars and forty-six cents ($699,746.46).

One Hundred Forty-fifth: Materials and supplies purchased for but not used in the construction of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Seventy thousand three hundred sixty-three dollars and thirty-nine cents ($70,363.39). By reason thereof the actual cost of said six steel tank vessels, and said three cargo vessels, Hull Nos. 1682-1684, to wit, Fifteen million three hundred forty-six thousand eight hundred seventy-one dollars and seventy-three cents ($15,346,871.73), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Seventy thousand three hundred sixty-three dollars and thirty-nine

cents ($70,363.39) or to the sum of Fifteen million two hundred seventy-six thousand five hundred eight dollars and thirty-four cents ($15,276,508.34).

One Hundred Forty-sixth: The amount by which said actual cost of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One Hundred Forty-fifth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Five million one hundred twenty-six thousand nine hundred ninety-one dollars and thirty-one cents ($5,126,991.31), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Forty-third hereof.

One Hundred Forty-seventh: Upon the completion, delivery and acceptance of said vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-sixth cause of action herein) the sum of Nine hundred twenty-two thousand one hundred forty dollars and fifty-six cents ($922,140.56), determined as follows:

The total actual cost of constructing said completed vessels as aforesaid	$15,346,871.73

The fixed sum for profit specified in said Article XIX of said contract (6 times $210,000 plus 3 times $207,500)	1,882,500.00
One-half of the amount by which the total actual cost of said completed vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph ~~One~~ Hundred Forty-fifth hereof (i. e., $15,276,508.34), is less than said revised estimated cost (i. e., $20,403,499.65), such one-half of said amount being not less than	2,563,495.65
The actual cost incurred in the partial construction of said canceled vessels	699,746.46
Fee for profit on account of the partial construction of said canceled vessels	69,974.65
Total amount which became payable from the defendant to the plaintiff under said contract	$20,562,588.49
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	19,640,447.93
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$922,140.56

One Hundred Forty-eighth: No part of said sum of Nine hundred twenty-two thousand one hundred forty dollars and fifty-six cents ($922,140.56), has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

THIRTEENTH CAUSE OF ACTION

(Contract 313 S. C.)

One Hundred Forty-ninth: On or about the 15th day of May, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Elizabethport, New Jersey, referred to in said contract, of ten tug boats in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 13, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Fiftieth: In and by the provisions of said contract the defendant agreed to pay to the plaintiff in respect of each of said vessels at least the actual cost to the plaintiff of the work on said vessel determined as in said contract provided and

in addition thereto, as compensation for services to be rendered by the plaintiff in the performance of said work, a sum for profit which should be not less than ten per cent. (10%) of the cost of said work, said sum for profit not to exceed in the case of each said vessel, however, Thirty thousand dollars ($30,000).

One Hundred Fifty-first: Thereupon the plaintiff entered upon the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications and the plaintiff duly performed all the terms and conditions of said contract on its part to be performed up to the time of the termination of the work thereunder as hereinafter in paragraph One Hundred Fifty-second hereof alleged.

One Hundred Fifty-second: On or about the 25th day of April, 1919, the defendant notified the plaintiff in writing that said contract was thereby canceled and instructed the plaintiff that all work thereunder should be terminated and thereupon without prejudice the plaintiff terminated all work under said contract and complied with the instructions of the defendant in that connection.

One Hundred Fifty-third: After the termination of the work under said contract as aforesaid, a complete audit of the cost of the work on said vessels, including the cost of all materials on hand for such work at the time of such termination, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Fifty-fourth: The total actual cost of constructing said ten vessels at the time of the

termination of the work thereon as defined in Article XVII of said contract was at least Four hundred eighty-eight thousand one hundred-ninety-two dollars and twenty-five cents ($488,192.25), which cost did not amount to more than Fifty thousand dollars ($50,000) in respect of any one vessel.

One Hundred Fifty-fifth: Upon the termination of the work under said contract as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-seventh cause of action herein) at least the sum of Eighty-four thousand forty-four dollars and twenty-nine cents ($84,044.29), determined as follows:

The total actual cost of the work on said vessels prior to the termination thereof as aforesaid	$488,192.25
Portion of fixed fees payable under said contract up to time of said termination (i. e. 10% of $488,192.25)	48,819.22
Total amount which became payable from the defendant to the plaintiff under said contract	$537,011.47
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	452,967.18
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$84,044.29

One hundred Fifty-sixth: No part of said sum of Eighty-four thousand forty-four dollars and twenty-nine cents ($84,044.29) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FOURTEENTH CAUSE OF ACTION.

(Contract 314 S. C.)

One hundred fifty-seventh: On or about the fifteenth day of May, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Wilmington, Delaware, referred to in said contract, of three steel tank vessels and seven cargo vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 14, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One hundred fifty-eighth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff

of constructing such vessels plus the fixed sum for profit for such vessel specified in said Article, One hundred fifty-six thousand dollars ($156,000) for each such steel tank vessel and Ninety-eight thousand dollars ($98,000) for each such cargo vessel, plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is One million five hundred sixty thousand dollars ($1,560,000), and of each of said cargo vessels is Nine hundred eighty thousand dollars ($980,000).

One hundred fifty-ninth: Thereafter, and on or about the 27th day of June, 1919, at the request of the plaintiff the defendant approved the transfer of the building of two of said cargo vessels (Owner's Hull Nos. 1980-81) from said shipyard mentioned in said contract to the Moore plant of the plaintiff at Elizabethport, New Jersey, and thereupon the plaintiff transferred the building of said two cargo vessels to said Moore plant.

One hundred sixtieth: The plaintiff completed said three steel tank vessels and said seven cargo vessels in accordance with said plans and specifica-

tions with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said three steel tank vessels and five of said cargo vessels complete to the defendant afloat at said shipyard at Wilmington, Delaware, on or before October 22, 1920, and said remaining two cargo vessels complete to the defendant afloat at said shipyard at Elizabethport, New Jersey, on or before June 29, 1920, and the defendant thereupon took possession of and accepted all said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted all said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One hundred sixty-first: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Two

million five hundred eleven thousand two hundred one dollars and sixty-one cents ($2,511,201.61).

One hundred sixty-second: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Three hundred thirty-three thousand one hundred dollars and fifty cents ($333,100.50).

One hundred sixty-third: The revised estimated cost of said vessels revised in accordance with the provisions of said contract was Fourteen million three hundred eighty-four thousand three hundred two dollars and eleven cents ($14,384,302.11), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,560,000 plus 7 times $980,000)	$11,540,000.00
Add aggregate increases in labor cost actually paid as aforesaid	2,511,201.61
Add net cost of said changes in said plans and specifications as aforesaid	333,100.50
Total revised estimated cost	$14,384,302.11

One hundred sixty-fourth: After the completion and delivery by the plaintiff of said vessels and

the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

One hundred sixty-fifth: The total actual cost of constructing said vessels as defined in Article XVII of said contract was Thirteen million seventy-three thousand eight hundred forty-five dollars and forty-six cents ($13,073,845.46), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One hundred sixty-sixth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Forty-eight thousand one hundred thirty dollars and seventy-nine cents ($48,130.79). By reason thereof the actual cost of said vessels to wit, Thirteen million seventy-three thousand eight hundred forty-five dollars and forty-six cents ($13,073,845.46), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the re-

vised estimated cost aforesaid, reduced by said sum of Forty-eight thousand one hundred thirty dollars and seventy-nine cents ($48,130.79) or to the sum of Thirteen million twenty-five thousand seven hundred fourteen dollars and sixty-seven cents ($13,025,714.67).

One hundred sixty-seventh: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One hundred sixty-sixth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications as aforesaid is not less than One million three hundred fifty-eight thousand five hundred eighty-seven dollars and forty-four cents ($1,358,587.44), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One hundred sixty-fifth hereof.

One hundred sixty-eighth: Upon the completion, delivery and acceptance of said vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-eighth cause of action herein) the sum of Five hundred fifty-nine thousand six hundred fifty-nine dollars and sixty-two cents ($559,659.62), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$13,073,845.46
The fixed sum for profit specified in said Article XIX of said contract (3 times $156,000 plus 7 times $98,000)	1,154,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One Hundred Sixty-sixth hereof (i. e. $13,025,714.67), is less than said revised estimated cost (i. e. $14,384,302.11), such one-half of said amount being not less than	679,293.72
Total amount which became payable from the defendant to the plaintiff under said contract	$14,907,139.18
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	14,347,479.56
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$559,659.62

One hundred sixty-ninth: No part of said sum of Five hundred fifty-nine thousand six hundred fifty-nine dollars and sixty-two cents ($559,659.62) has been paid, although duly demanded, and said

sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FIFTEENTH CAUSE OF ACTION

(Contract 340 S. C.)

One hundred seventieth: On or about the 21st day of June, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering (a) the erection and equipping of a shipbuilding plant for the defendant upon property then owned, or thereafter to be acquired, by the defendant at Alameda, near the City of San Francisco, California, and as a part thereof and for use in connection therewith an office building upon property to be leased by the plaintiff at Bethlehem, Pennsylvania, in accordance with the terms and provisions of said contract and the plans and specifications for said shipbuilding plant therein referred to, subject, however, to such modifications of said plans and specifications as the defendant might direct, and (b), after said shipyard should be ready, the construction by the plaintiff for the defendant at said shipyard of twenty (20) steel steam vessels suitable for and equipped to transport troops, in accordance with the terms and provisions of said contract and the plans and specifications for said vessels therein referred to, subject, however, to such changes in said last-mentioned plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without either set of said plans and specifications), marked Ex-

hibit 15, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One hundred seventy-first: In and by the provisions of Article XXIV of said contract, the defendant agreed that in case it should for any reason cancel said contract and terminate the work thereunder, it would pay to the plaintiff, in addition to the cost of construction of said shipbuilding plant and of the work on the vessels to be constructed under said contract, including the cost of all materials then on hand for such construction and work, five per cent. (5%) of that part of such cost as applies to the construction of said shipbuilding plant and seven and one-half per cent. (7½%) of that part which applies to the construction of said vessels which should then be uncompleted. The defendant also agreed that upon the completion of said vessels or upon the cancellation of said contract a complete audit of the cost of construction of said shipbuilding plant and the work on the vessels to be constructed under said contract would be made by the defendant and that thereupon the amount determined to be due to the plaintiff thereunder should become immediately due and payable.

One hundred seventy-second: Thereupon the plaintiff entered upon the erection and equipping of said shipbuilding plant and the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications, and the plaintiff duly performed all the terms and conditions of said contract on its part to be performed up to the time of the termination of the work

thereunder as hereinafter in paragraph One hundred seventy-third hereof alleged.

One hundred seventy-third: On or about the 15th day of October, 1918, the defendant cancelled said contract and terminated all work thereunder.

One hundred seventy-fourth: After the cancellation of said contract and the termination of the work thereunder, a complete audit of the cost of construction of said shipbuilding plant and of the partial construction of said vessels, including the cost of all materials on hand for such construction and work at the time of said cancellation, was made by the defendant and completed on or before the first day of September, 1922.

One hundred seventy-fifth: The cost of construction of said shipbuilding plant, including the cost of all materials on hand for such construction at the time of said cancellation, was at least the sum of Five million one hundred sixty thousand nine hundred seventy-one dollars and fifty-nine cents ($5,160,971.59) and the cost of the work on said vessels including the cost of all materials then on hand for such work, was at least the sum of Three hundred seventy-five thousand dollars ($375,000).

One hundred seventy-sixth: Upon the cancellation of said contract as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-ninth cause of action herein) at least the sum of Two hundred seventy-six thousand one hundred

seventy-three dollars and fifty-eight cents ($276,173.58), made up as follows:

5% of $5,160,971,59	$258,048.58
7½% of $375,000	28,125.00
Deduct salvage value of the interest of the Fleet Corporation in the office building constructed by the plaintiff under said contract	10,000.00
Total amount (exclusive of the aforesaid damages) which became due from the defendant to the plaintiff	$276,173.58

One hundred seventy-seventh: No part of said sum of Two hundred seventy-six thousand one hundred seventy-three dollars and fifty-eight cents ($276,173.58) has been paid, although duly demanded; and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SIXTEENTH CAUSE OF ACTION

(Contract 465 S. C.)

One hundred seventy-eighth: Under date of the fifteenth day of July, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of six troop ships (denominated by the defendant Hull Nos. 2505-2510, and hereafter in this cause of action sometimes referred to by said numbers) in accordance with the terms and provisions of said contract

and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 16, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One hundred seventy-ninth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Three hundred twenty thousand dollars ($320,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such fixed sum for profit to be increased on account of increases in cost due to changes in said plans and specifications in the proportion that said fixed sum for profit specified in said Article bears to the estimated cost specified in said Article, and such estimated cost to be increased or decreased, as the case might be, by (a) the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, (b) the net cost of any changes in said plans or specifications made by the authority of the defendant, (c) any adjustment in accordance with said contract resulting from the fact that the price of materials should be above or below the prices specified in Exhibit A to said contract, and (d) in-

creases or decreases in the freight rates which might be made during the life of said contract; subject to the condition, however, that the amount that should be paid to the plaintiff in respect of any of said vessels on account of any sum by which such actual cost of said vessel should be less than such estimated cost thereof, revised as aforesaid, should not exceed Two hundred thousand dollars ($200,000). In and by the provisions of said contract the defendant also agreed that the amount that it would pay to the plaintiff in respect of any of said vessels should not be less than the actual cost to the plaintiff of the work on said vessel determined as in said contract provided, plus, as compensation for services to be rendered by the plaintiff in the performance of said work, a sum for profit which should be not less than seven and six thousand nine hundred twenty-three ten thousandths per cent. (7.6923%) of the cost of said work, said sum for profit not to exceed in the case of each such vessel, however, Three hundred and twenty thousand dollars ($320,000), or such amount to which said sum for profit for each such vessel should be increased in accordance with said contract. The estimated cost of each of said vessels specified in said Article XIX is Four million one hundred sixty thousand dollars ($4,160,000).

One hundred eightieth: Thereupon the plaintiff entered upon the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications. Thereafter, and on or about the 5th day of April, 1919, the plaintiff and the defendant modified said contract so as to provide thereby that said vessels should be completed as combined passenger and cargo vessels in accordance with definite instructions to be is-

sued by the defendant. Thereafter the defendant issued such instructions and the plaintiff in pursuance thereof completed said vessels (with the exception of the vessels work on which was terminated as hereinafter in paragraph One hundred eighty-first hereof set forth) as combined passenger and cargo vessels.

One hundred eighty-first: On or about the 24th day of August, 1920, the plaintiff received from the defendant instructions to suspend all work on three of said vessels, Hull Nos. 2508-2510, and on or about the 29th day of November, 1920, the defendant notified the plaintiff in writing that it had on the 25th day of October, 1920, cancelled so much of said contract as related to the construction of said three vessels. Following the receipt of said instructions directing the suspension of work on said three vessels the plaintiff without prejudice suspended work thereon and thereafter without prejudice complied with all instructions of the defendant in that connection.

One hundred eighty-second: The plaintiff completed said remaining three vessels, Hull Nos. 2505-2507, in accordance with said plans and specifications with said changes agreed upon as in paragraph One hundred eightieth hereof mentioned and with other changes therein from time to time authorized by the defendant in accordance with the provisions of said contract, and delivered said three vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before May 9, 1922, and the defendant thereupon took possession of and accepted said three vessels. The plaintiff duly performed all the terms and conditions of said contract on its

part to be performed and the defendant took possession of and accepted said three vessels, Hull Nos. 2505-2507, as constructed in accordance with said plans and specifications as modified as above and as hereinafter stated and the terms and conditions of said contract.

One hundred eighty-third: While the plaintiff was engaged in the work of constructing said three vessels, Hull Nos. 2505-2507, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said three vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said three vessels. The aggregate amount by which the labor cost of said three vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million five hundred nine thousand one hundred seventy-eight dollars and eighty-six cents ($1,509,178.86).

One hundred eighty-fourth: In addition to the changes in said plans and specifications in paragraph One Hundred eightieth hereof mentioned, the defendant, from time to time, while the plaintiff was engaged in the work of constructing said three vessels,

Hull Nos. 2505-2507, under and pursuant to the terms of said contract, ordered and directed that certain other changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. By reason of all said changes in said plans and specifications made up to March 1, 1921, the estimated cost of each of said three vessels specified in Article XIX of said contract was increased in accordance with said Article by at least the sum of One million four hundred forty thousand dollars ($1,440,000), and the fixed sum for profit for each of said three vessels specified in said Article was in accordance with said Article increased by at least the sum of One hundred ten thousand seven hundred sixty-nine dollars and twelve cents ($110,769.12). The net amount by which the estimated cost of said three vessels, Hull Nos. 2505-2507, was increased in accordance with said Article by said changes in said plans and specifications made after March 1, 1921, was One million one hundred eighty-three thousand seven hundred and seventy-three dollars ($1,183,773). The net amount by which said fixed sum for profit for each of said three vessels was increased in accordance with said Article by said changes in said plans and specifications made after March 1, 1921, was Thirty thousand three hundred fifty-three dollars and twelve cents ($30,353.12). The net amount by which the estimated cost of said three vessels was increased by reason of all said changes in said plans and specifications in this paragraph mentioned, as found on said audit, aggregated at least Five million five hundred three thousand seven hundred and seventy-three dollars ($5,503,773). The net amount by which said fixed sum for profit for each of said three vessels was increased in accord-

ance with said Article by reason of all said changes in said plans and specifications aggregated at least the sum of One hundred forty-one thousand one hundred twenty-two dollars and twenty-four cents ($141,122.24).

One Hundred Eighty-Fifth: From time to time during the period of the construction of said three vessels, Hull Nos. 2505-2507, the prices of materials used in the construction of said three vessels were less than the prices specified in Exhibit A to said contract, while freight rates were from time to time increased over the freight rates in force at the time said contract was made. The net amount by which the estimated cost of said three vessels was in accordance with said contract decreased by reason of said decreases in said prices of materials and said increases in said freight rates was, as found on said audit, One hundred eighty-seven thousand nine hundred eighty dollars and sixty-eight cents ($187,980.68).

One Hundred Eighty-sixth: The revised estimated cost of said three vessels, Hull Nos. 2505-2507, revised in accordance with the provisions of said contract was Nineteen million three hundred four thousand nine hundred seventy-one dollars and eighteen cents ($19,304,971.18) made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $4,160,000)	$12,480,000.00
Add on account of net cost of said changes in said plans and specifications made prior to March 1, 1921	4,320,000.00
Add on account of net cost of said	

changes in said plans and specifications made after March 1, 1921	1,183,773.00
Add aggregate increases in labor cost, actually paid as aforesaid	1,509,178.86
Deduct adjustments in estimated cost by reason of changes in material prices and freight rates as aforesaid	187,980.68
Total revised estimated cost of said three vessels	$19,304,971.18

One Hundred Eighty-seventh: After the completion and delivery by the plaintiff of said three vessels, Hull Nos. 2505-2507, and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said three vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, and of the total cost of the work on said three vessels, Hull Nos. 2508-2510, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Eighty-eighth: The total actual cost of constructing said three vessels, Hull Nos. 2505-2507, as defined in Article XVII of said contract was Fifteen million two hundred thirty-three thousand five hundred thirteen dollars and seventy-four cents ($15,233,513.74), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said three vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto. The total actual cost of the work on said three vessels, Hull Nos. 2508-2510, up to the time of the termina-

tion thereof as aforesaid, as defined in said Article XVII, was Three million thirty-three thousand eight hundred eighty-six dollars and ninety-six cents ($3,033,886.96).

One Hundred Eighty-ninth: Materials and supplies purchased for but not used in the construction of said three vessels, Hull Nos. 2505-2507, which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said three vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-six cents ($152,598.36). By reason thereof the actual cost of said three vessels, to wit, Fifteen million two hundred thirty-three thousand five hundred thirteen dollars and seventy-four cents ($15,233,513.74), was for the purpose of determining the amount by which the actual cost of said three vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-six cents ($152,598.36) or to the sum of Fifteen million eighty thousand nine hundred fifteen dollars and thirty-eight cents ($15,080,915.38).

One Hundred-Ninetieth: The amount by which said actual cost of said three vessels, Hull Nos. 2505-2507, determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials

and supplies in paragraph One Hundred Eighty-ninth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages, the net cost of said changes in said plans and specifications as aforesaid and said changes in material prices and freight rates, is not less than Four million two hundred twenty-four thousand fifty-five dollars and eighty cents ($4,224,055.80), one-half of which amount is greater than the sum of Six hundred thousand dollars ($600,000), the maximum amount of savings payable in respect of said three vessels in accordance with the terms and provisions of said contract.

One Hundred Ninety-first: Upon the termination of the work on said three vessels, Hull Nos. 2508-2510, and the completion, delivery and acceptance of said three vessels, Hull Nos. 2505-2507, as aforesaid, and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Fortieth cause of action herein) at least the sum of One million four hundred seventy-two thousand five hundred two dollars and seventy-one cents ($1,472,502.71) determined as follows:

The actual cost of constructing said vessels, Hull Nos. 2505-2507, as aforesaid	$15,233,513.74
The actual cost of the work on said vessels, Hull Nos. 2508-2510, prior to the termination thereof as aforesaid	3,033,886.96
The aggregate of the fixed sums for profit for said three vessels,	

Hull Nos. 2505-2507, specified in said Article XIX of said contract as modified as in paragraph One Hundred Eighty-fourth hereof set out (3 times $461,122.24)	1,383,366.72
The maximum amount of savings on account of said vessels, Hull Nos. 2505-2507, specified in said Article XIX as so modified (3 times $200,000)	600,000.00
Portion of fixed sums for profit payable under said contract on account of said vessels, Hull Nos. 2508-2510 (i. e., 7.6923% of $3,033,886.96)	233,375.69
Total amount which became payable from the defendant to the plaintiff under said contract	$20,484,143.11
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	19,011,640.40
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$ 1,472,502.71

One Hundred Ninety-second: No part of said sum of One million four hundred seventy-two thousand five hundred two dollars and seventy-one cents ($1,472,502.71) has been paid, although duly demanded, and said sum is now due and owing from

the defendant to the plaintiff with interest thereon from the first day of September, 1922.

NINETEENTH CAUSE OF ACTION

(Contract for Curtis Propelling Equipments, etc.)

Two Hundred Sixth: On or about the thirtieth day of September, 1919, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant of six 12,000 horse-power Curtis Marine Propelling Equipments with Falk gears complete with spares and accessories, in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, for the sum of One million six hundred sixty-one thousand six hundred and seventy dollars ($1,661,670) for said six equipments, and Forty thousand six hundred and fifty dollars ($40,650) for said six sets of spares accompanying said equipments, delivered complete f. o. b. cars as provided in said contract. A copy of said contract (without said plans and specifications) marked Exhibit 19 is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Two Hundred Seventh: The plaintiff completed said six equipments and said six sets of spares in accordance with the terms and provisions of said contract and said plans and specifications and delivered the same complete to the defendant f. o. b. cars, as provided in Section 2 of Article I of said contract, on or before the first day of February,

1921. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said equipments and said spares as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Two Hundred Eighth: Upon the completion and delivery of said equipments and said spares as aforesaid there became due from the defendant to the plaintiff the sum of One million seven hundred two thousand three hundred and twenty dollars ($1,702,320), no part of which has been paid except the sum of One million six hundred twelve thousand three hundred dollars and forty-five cents ($1,612,300.45). The balance thereof amounting to Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) is now due and owing from the defendant to the plaintiff with interest thereon from the first day of February, 1921, and, although duly demanded, no part of said balance has been paid.

TWENTIETH CAUSE OF ACTION

(Restoration of Leased Land at Wilmington)

Two Hundred Ninth: On or about the eighteenth day of February, 1918, the plaintiff and The Pusey & Jones Company, a Delaware corporation, and the defendant entered into an agreement, whereby the plaintiff and said The Pusey & Jones Company agreed to lease certain land belonging to The Pennsylvania Railroad Company in Wilmington, Delaware, and to erect barracks thereon to provide housing facilities for United States troops on guard duty at the shipyards of the plaintiff and of said The

Pusey & Jones Company at Wilmington, Delaware, and the defendant agreed to reimburse the plaintiff and said The Pusey & Jones Company for the expense thereof. Thereafter the plaintiff and said The Pusey & Jones Company leased said land from The Pennsylvania Railroad Company and constructed said barracks thereon in accordance with plans approved by the War Department of the United States of America, and the defendant reimbursed the plaintiff and said The Pusey & Jones Company from time to time for the expenditures made, both as rental for said land and for the cost of construction of said barracks. By the terms of the agreement of lease of said land it was provided, among other things, that upon the termination of said agreement of lease the lessees would remove from said land the buildings erected thereon and restore said land to its original condition.

Two Hundred Tenth: After the termination of said agreement of lease, in the latter part of the year 1919, the defendant, in accordance with the terms thereof, removed said barracks and on or about the 29th day of March, 1920, entered into an agreement with the plaintiff whereby the plaintiff agreed to provide for the restoration of said land and the defendant agreed to reimburse the plaintiff for the cost thereof. In accordance with said agreement, and at the direction and with the approval of the defendant, the plaintiff procured the restoration of said land to its original condition at a total cost to the plaintiff of Two thousand five hundred and seventy dollars ($2,570).

Two Hundred Eleventh: Upon the restoration of said land to its original condition as aforesaid, there became due from the defendant to the plaintiff

the sum of Two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the plaintiff from the defendant with interest thereon from the first day of June, 1920.

* * * * * * *

Two Hundred and Ninety-seventh: Wherefore, by reason of the facts hereinabove in this statement set out, the plaintiff avers that there is justly due from and claims of the defendant in this suit the sum of Seven million six hundred ninety-one thousand four hundred dollars and fourteen cents ($7,691,400.14), together with interest on Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from the first day of February, 1921, on Two thousand five hundred seventy dollars ($2,570) from the first day of June, 1920, on Four thousand eight hundred ninety-two dollars and sixty-six cents ($4,892.66) from the twenty-third day of January, 1920, and on Seven million five hundred ninety-three thousand nine hundred seventeen dollars and ninety-three cents ($7,593,917.93) from the first day of September, 1922, together with the costs and disbursements of this suit.

CHARLES SINKLER,
Attorney for the Plaintiff.

CRAVATH, HENDERSON & DE GERSDORFF,
Of Counsel.

State of New York,
County of New York, ss:

Robert E. McMath, being duly sworn according to law, deposes and says that he is the Secretary of

Bethlehem Shipbuilding Corporation, Ltd., the plaintiff named in the foregoing statement of claim; that he has read the same and is familiar with the facts set forth therein, and is authorized to make this affidavit on behalf of the plaintiff corporation; that the facts set forth in said statement of claim so far as they have been made of his own knowledge are true, and so far as made upon information derived from others he is informed and verily believes them to be true; and all of said allegations the plaintiff corporation expects to be able to prove at the trial of the case.

ROBERT E. MCMATH

(Notarial Seal)

Sworn to and subscribed before me the 28th day of January, 1926.

Wm. J. Brown,
Notary Public, Kings County No. 246
Kings County Register No. 6245
Certificate filed in New York Co. No. 722-A
New York County Register No. 6145
Commission Expires March 30, 1926.

EXHIBIT 1-A

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Vessels

at

San Francisco, California.

Owner's Contract No. 177-S. C.
Owner's Hull Nos. 1127-1138
Contractor's Hull Nos. 5257-5268

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the lessee of certain real estate situated at San Francisco, in the State of California, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), twelve (12) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of twelve (12) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, in

cluding duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

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IX.

CASUALTY INSURANCE.

The Contractor agrees to insure to the satisfaction of the Owner as far as insurance shall be procurable at reasonable cost, against the liability of the Contractor and/or the Owner for injuries to or death of employees, workmen, or the public or others in, on, or about the work covered by this contract.

The Contractor shall to the best of its ability protect the Owner against claims for any infringements of patents or patent rights and for the use of any patented articles embodied or to be embodied in the

vessels, by suitable agreement satisfactory to the Owner as to the use of such patents or patent rights. The Owner will assume all costs, expenses and damages which it or the Contractor may be obliged to pay to procure such agreements, or to pay by reason of any infringement of patents or patent rights or the use of patent articles not covered by such agreements, pursuant to a decree by a proper court in any litigation involving the use of such patents, but the Contractor shall assist the Owner at the latter's expense, save for services of the Contractor's employees, in furnishing such evidence as to the use of the patents and other matters of fact as may be required by the Owner in such litigation. The Contractor shall promptly notify the Owner in writing of any claims of infringement that may from time to time be brought to the Contractor's attention.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on the contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the

Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, (in addition to the amounts to be deposited and provided as in Article XXVIII hereof specified), in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said twelve (12) vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purpose and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the owner until withdrawn as aforesaid; and upon final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work

under this contract but not paid for from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the twelve (12) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

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XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided shall be the actual cost, plus

the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at said shipyard of Two million one hundred and twenty thousand dollars ($2,120,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over that which would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Two Million One Hundred and Twenty Thousand Dollars ($2,120,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two Hundred and Ten Thousand Dollars ($210,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Two Hundred and Ten Thousand Dollars ($210,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sum for profit of Two Hundred and Ten Thousand Dollars ($210,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said Two Hundred and Ten Thousand Dollars ($210,000) determined as hereinbefore provided shall become immediately due and payable.

. . . . . .

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to

an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at San Francisco, California, or to be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate

officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By CHARLES PIEZ,
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2/2/18

W. H. W. Jr.
Legal Division

EXHIBIT 2-A

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Vessels

at

Wilmington, Delaware.

Owner's Contract No. 178-S. C.
Owner's Hull Nos.

Tankers 1139, 1140, 1141
Cargo 1142, 1143, 1144

Contractor's Hull Nos.

Tankers 3450, 3451, 3462
Cargo 3459, 3460, 3461

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of

Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, The Contractor is the owner of certain real estate situated at Wilmington, in the State of Delaware, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) steam, steel tank vessels of about seven thousand five hundred (7,500) tons dead weight carrying capacity each, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about seven thousand five hundred (7,500) tons dead

weight carrying capacity, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

. . . . . .

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title

to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit (in addition to the amount to be deposited and provided as in Article XXVIII hereof specified), in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said six (6) vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be

countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the six (6) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as ma[illegible] be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:—

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XIX.

PRICE—FIXED PROFIT.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of One million six hundred and twelve thousand dollars ($1,612,000) for each of said tank vessels, and of One million three hundred and fifty thousand dollars ($1,350,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the ves-

sel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of One million six hundred and twelve thousand dollars ($1,612,000) or of any cargo vessel in the execution of the work reach or exceed the sum of One million three hundred and fifty thousand dollars ($1,350,000), or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One hundred and sixty thousand dollars ($160,000) for such tank vessel, and One hundred and twenty-five thousand dollars ($125,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of One hundred and sixty thousand dollars ($160,000), and One hundred and twenty-five thousand dollars ($125,000), respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS, WHEN PAYABLE.

Said fixed sums for profit of One hundred and sixty thousand dollars ($160,000) and One hundred and twenty-five thousand dollars ($125,000) respectively, shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment

on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of One hundred and sixty thousand dollars ($160,000), and One hundred and twenty-five thousand dollars ($125,000), respectively, determined as hereinbefore provided shall become immediately due and payable.

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XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Penn-

sylvania, and a copy to it at Wilmington, Delaware, or be delivered personally to an executive officer or the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,
By J. W. POWELL,
Vice President.
(Corporate Seal)

Attest:

A. N. Roberts,
Assistant Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By CHARLES PIEZ,
Vice President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2-2-18

W. H. W. Jr.
Legal Division

EXHIBIT 3.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

SPARROW'S POINT, MARYLAND

Owner's Contract No. 179-S. C.
Owner's Hull Nos. 1145, 1146, 1147.
Contractor's Hull Nos. 4177, 4178, 4179

Dated December 31st, 1917

CONTRACT made this 31st day of December, 1917 between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing

the United States of America, party of the second part.

WHEREAS, the Contractor is the owner of certain real estate situate at Sparrows Point, in the State of Maryland, and the shipyard located thereon; and

WHEREAS, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include every

thing covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects, and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans, and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * * *

X.

LABOR.

The Contractor shall comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for

the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the re-

placement of unsatisfactory workmanship and/or materials.

. . . . . .

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work; to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the

final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of

actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the three (3) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:—

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

. . . . . .

XIX.

PRICE—FIXED PROFIT.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein, as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918 at the Navy Yard of the United States at Norfolk, Virginia, of Two million and seventy thousand dollars ($2,070,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Two million and seventy thousand dollars ($2,070,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two hundred thousand dollars ($200,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase

of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Two hundred thousand dollars ($200,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sum for profit of two hundred thousand dollars ($200,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said Two hundred thousand dollars ($200,000) determined as hereinbefore provided shall become immediately due and payable.

* * * * * * *

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it to Sparrows Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner;

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit

that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By CHARLES PIEZ,
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2/2/18

W. H. W. Jr.
Legal Division

EXHIBIT 4

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Two (2) Troop Ships of about 10,000 Tons Dead Weight Carrying Capacity each,

at

Sparrow's Point, Maryland

Owner's Contract No. 182—S. C.

Owner's Hull Nos. 1164 to 1165 Inc.

Contractor's Hull Nos. 4180-4181

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District

of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrow's Point, in the State of Maryland, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), two (2) troop ships of about 10,000 tons dead weight carrying capacity each complete in accordance with the drawings and specifications of the Owner hereto attached and made a part of this contract;

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of two (2) troop ships of about 10,000 tons dead weight carrying capacity each in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurten-

ances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the

Contractor to secure with the utmost practical expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XIV.

* * * * * * * *

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for,

shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work un-

der this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the two (2) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:—

(a) The net cost, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * * *

XIX

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost deter-

mined as in Article XVII hereof provided, plus the sum for profit equal to ten per cent (10%) of the amount of such cost.

PROFITS WHEN PAYABLE.

Said profit shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said profit shall have been paid to the Contractor. Thereafter further payments on account of said profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner.

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XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at Sparrow's Point, Mary-

land, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

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XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may rise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION,

By CHARLES PIEZ,
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2/4/18

W. H. W. Jr.
Legal Division

EXHIBIT 5.

CONTRACT

between

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION,
Ltd.

For Construction of Vessels

at

FORE RIVER, MASSACHUSETTS.

Owner's Contract No. 183-S. C.

Owner's Hull Nos. 1166, 1167, 1168

Contractor's Hull Nos. 1376, 1377, 1378

Dated December 31st, 1917

CONTRACT made this 31st day of December, 1917, between BETHLEHEM SHIPBUILDING CORPORATION, LTD., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation organized under the laws of the District of Columbia (herein called the Owner),

representing the United States of America, party of the second part.

WHEREAS, the Contractor is the lessee of certain real estate situated at Fore River, in the State of Massachusetts, and the shipyard located thereon; and

WHEREAS, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) steam, steel tank vessels of about nine thousand one hundred (9,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about nine thousand one hundred (9,100) tons dead weight carrying capacity, in accordance with the

plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessel shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects, and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in

writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner, will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this con-

tract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article VXII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such

sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the

Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the three (3) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, the actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor

by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with

the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XIX.

PRICE—FIXED PROFIT.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Boston, Mass., of One Million eight hundred and sixty-five thousand dollars ($1,865,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of One million eight hundred and sixty-five thousand

dollars ($1,865,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One hundred and eighty-five thousand dollars ($185,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of One hundred and eighty-five thousand dollars ($185,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS, WHEN PAYABLE.

Said fixed sum for profit of One hundred and eighty-five thousand dollars ($185,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit

and any additional profit over and above said One hundred and eighty-five thousand dollars ($185,000) determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at Quincy, Mass., or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Pennsylvania.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or parts of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached, as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By CHARLES PIEZ
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER
Secretary.

Approved as to Form

Date—2/4/18

W. H. W. Jr.
Legal Division

EXHIBIT 6.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Four (4) Steam Steel Cargo Vessels

at

SAN FRANCISCO, CALIFORNIA.

Owner's Contract No. 191-S. C.

Owner's Hull Nos. 1220, 1221, 1222, 1223.

Contractor's Hull Nos. 150, 151, 153, 170.

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corpo-

ration organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

WHEREAS, the Contractor is the lessee of certain real estate situated at San Francisco, in the State of California, and the shipyard located thereon; and

Whereas, the Owner placed an order with the Contractor to complete at said shipyard of the Contractor, under the rules and regulations of Lloyd's four (4) steam, steel cargo vessels, complete with propelling machinery full military requirements (including war zone requirements), auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications hereto attached and made a part of this contract, having Contractor's Hull Numbers and approximate dead weight capacities, respectively as follows:

Contractor's Hull Number	Approximate Dead Weight Capacity
150	11,800 tons
151	11,700 "
153	11,800 "
170	12,000 "

Now, therefore, this agreement witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of said four (4) steel, cargo vessels in

accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service, including service in war zone, as provided for in the specifications, and shall be delivered to the owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of em-

ployment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure, for the Contractor, rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so for as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or

used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary to pay for work already done and materials already furnished and for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized repre-

sentatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the time and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the

Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual cost and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to the shipyard and to the Contractor's offices to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the four (4) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * *

XIX.

PRICE.

The price to be paid for such vessels to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at said shipyard of the Contractor as follows:

Hull Number	Estimated Actual Cost
150	$2,124,000
151	2,106,000
153	2,124,000
170	2,160,000

Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be in-

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curred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications hereafter made by the authority of the Owner. Should the actual cost of any of said vessels in the execution of the work reach or exceed the sum above mentioned as the estimated actual cost thereof, or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sums for profit for said vessels, respectively, as follows:—

Hull Number	Fixed Sum for Profit
150	$212,400
151	210,600
153	212,400
170	216,000

Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit respectively one half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit respectively shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of

said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above the fixed sums for profit mentioned above respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * *

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at San Francisco, California, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTEREST.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In Witness Whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS
Assistant Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION

By CHARLES PIEZ
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER
Secretary

EXHIBIT 7

CONTRACT

between

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION,
Ltd.

For Construction of One (1) Steam Steel Cargo Vessel of about Seven Thousand Four Hundred (7,400) Tons Dead Weight Carrying Capacity
at
SPARROWS POINT, MARYLAND.

Owner's Contract No. 196—S. C.
Owner's Hull No.
Contractor's Hull No. 176.

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between BETHLEHEM SHIPBUILDING CORPORATION, LTD., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a

corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrows Point, in the State of Maryland, and the shipyard located thereon; and

Whereas, the Owner has placed with the Contractor an order to complete at said shipyard of the Contractor, under the rules and regulations of Lloyds the construction of one (1) steam, steel cargo vessel of about seven thousand four hundred (7,400) tons dead weight carrying capacity, known as the Contractor's Hull No. 176, complete with propelling machinery, full military requirements (including war zone requirements), auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications hereto attached and made a part of this contract:

Now, therefore, this contract Witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of one (1) steel cargo vessel of about seven thousand four hundred (7,400) tons dead weight carrying capacity in accordance with the plans and specifications aforesaid. The construction of said vessel (the word "vessel" as used

throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said Vessel shall be provided with equipments, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service including service in war zone as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor (it being understood that Hull 176 is to be as nearly as may be a duplicate of Hull 173 with all changes ordered therein to date including full military requirements and that the specifications and drawings attached hereto so provide).

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of said vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of em-

ployment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

. . . . . .

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to the vessel either completed or under construction in so far as it shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used

in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

. . . . . .

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessel herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary to pay for work already done on the vessel and for material already furnished therefor and for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance

by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessel. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the

Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to the said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessel herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of the vessel from any others being built at the shipyards of the Contractor.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessel shall include the following, and items similar thereto in principle:—

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and

entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessel, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessel constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessel under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, shall be

determined by arbitration in the manner provided for in Article XX.

* * * * * * * * *

XIX.

PRICE—FIXED PROFIT.

The price to be paid for the vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Norfolk, Virginia, of One Million Two Hundred and Ninety-five Thousand Dollars ($1,295,000); Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications hereafter made by the authority of the Owner. Should the actual cost of the vessel in the execution of the work reach or exceed the sum of One Million Two Hundred and Ninety-five Thousand Dollars ($1,295,000) or such revised estimated cost in lieu thereof as shall

be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One Hundred and Twenty-nine Thousand Five Hundred Dollars ($129,500) for the vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on the vessel in addition to said fixed sum for profit of One Hundred and Twenty-nine Thousand Five Hundred Dollars ($129,500) one-half the amount by which such actual cost of the vessel falls short of the estimated cost revised as aforesaid.

PROFIT, WHEN PAYABLE.

Said fixed sum for profit of One Hundred and Twenty-nine Thousand Five Hundred Dollars ($129,500) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessel there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said One Hundred and Twenty-nine Thousand Five Hundred

Dollars ($129,500) determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at Sparrows Point, Maryland, or to be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In Witness Whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.,

By J. W. POWELL
Vice President.

(Corporate Seal)

Attest:

A. N. ROBERTS
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

By CHARLES PIEZ
Vice President.

(Corporate Seal)

Attest:

LESTER SISLER
Secretary.

Approved as to form

Date—2/21/18

W. H. W. Jr.
Legal Division.

EXHIBIT 8

CONTRACT
between
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
and
BETHLEHEM SHIPBUILDING CORPORATION, Ltd.,
For Construction of Vessels
at
SPARROWS POINT, MARYLAND

Owners' Contract No. 226—S. C.
Owner's Hull Nos.

Cargo 1548-49-50
Tanks 1551-54

Contractor's Hull Nos.

Cargo 4182-3-4
Tanks 4185-6-7-8

Dated March 18th, 1918

CONTRACT made this eighteenth day of March, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United

States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrows Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau,) four (4) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels in accordance with Contractor's drawings and specifications attached to United States Shipping Board Emergency Fleet Corporation Contract #179—S. C. for the tank vessels and to contract #178—S. C. for the cargo vessels.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of four (4) steel tank vessels, each of

about ten thousand one hundred (10,100) tons dead weight carrying capacity, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will, give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been

inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said seven (7) vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will

be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the seven (7) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918 at the Navy Yard of the United States, Norfolk, Virginia, of Two Million Dollars ($2,000,000.00) for each of said tank vessels and of One Million Two Hundred Ninety-five Thousand Dollars ($1,295,000.00) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall

also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of Two Million Dollars ($2,000,000.00) or of any cargo vessel in the execution of the work reach or exceed the sum of One Million Two Hundred Ninety-five Thousand Dollars ($1,295,000.00) or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two Hundred Thousand Dollars ($200,000.00) for such tank vessel and One Hundred and Twenty-five Thousand Dollars ($125,000.00) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of Two Hundred Thousand Dollars ($200,000.00) and One Hundred and Twenty-five Thousand Dollars ($125,000) respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of Two Hundred Thousand Dollars ($200,000.00) and One Hundred and Twenty-five Thousand Dollars ($125,000.00) respectively shall be paid as follows:

PROFITS—WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten percent (10%) thereof as part payment on account of said profit, such payments of said ten per-

cent. (10%) to be continued until ninety percent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of Two Hundred Thousand Dollars ($200,000.00) and One Hundred and Twenty-five Thousand Dollars ($125,000.00) respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Penna., and a copy to it at Sparrow's Point, Mary-

land, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * *

In Witness Whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By CHARLES PIEZ,
Vice President.

(Corporate Seal)

Attest:

LESTER SISLER

Approved as to form

Date—4-23-18

W. H. W. Jr.
Legal Division

EXHIBIT 9.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

San Francisco, California

Owner's Contract No. 230-S. C.

Owner's Hull Nos. 1574, 1575.

Contractor's Hull Nos. 215, 216

Dated April 22nd, 1918.

CONTRACT made this 22nd day of April, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the lessee of certain real estate situated at San Francisco, in the State of California, and the shipyard located thereon; and

Whereas, the Owner placed an order with the Contractor to complete at said shipyard of the Contractor, under the rules and regulations of Lloyd's, two (2) steam, steel cargo vessels, complete with propelling machinery, full military requirements (including war zone requirements), auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications hereto attached and made a part of this contract, having Contractor's Hull Numbers and approximate dead weight capacities, respectively as follows:

The Contractor's Hull Numbers.	Approximate Dead Weight Cap.
215	11,800 tons
216	11,800 tons.

Now, therefore, this agreement witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

1.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of said two (2) steel cargo vessels in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifica-

tions, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements and appurtenances of every kind, complete in all respects and ready for service, including service in war zone, as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Con-

tractor will promptly notify the Owner of any labor difficulties.

* * * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract, and will in its discretion also use its influence and powers to procure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels, either completed or under construction insofar as they shall have been inspected and approved by the Owners, shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary to pay for work already done and materials already furnished and for carrying on the work under this contract, the Owner will from time to time deposit, in its own name in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes, and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract, or upon default hereunder upon the part of the Contractor, the Owner may withdraw without the signa-

ture of the Contractor any balance on hand in any bank account established under this Article.

OTHER ITEMS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payments shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the time and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be at all times adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to the shipyard and to the Contractor's offices to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the two (2) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof, and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract, and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the said shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purpose of this contract, actual cost of the construction of the vessels shall include the following and items similar thereto, in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, man-

agement, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance otherwise.

(f) A reasonable allowance according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XIX.

Price.

The price to be paid for such vessels to be constructed and furnished in accordance with the terms

of this contract, including authorized changes therein as herein provided, shall be the actual cost plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at said shipyard of the Contractor as follows:

Hull Numbers	Estimated Actual Cost
215	$2,075,000.00
216	$2,075,000.00

Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wage increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications hereafter made by the authority of the Owner. Should the actual cost of any of said vessels in the execution of the work reach or exceed the sum above mentioned as the estimated actual cost thereof, or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sums for profit for said vessels, respectively, as follows:

Hull Numbers	Fixed Sum for Profit
215	$207,500.00
216	$207,500.00

Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit respectively shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which said sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above the fixed sums for profit mentioned above respectively determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation, Washington, D. C., or delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at San Francisco, Calif., or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * *

XXV.

PARTICIPATION IN PROFIT.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply

to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above noted.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,
By
J. W. POWELL,
Vice-President

(Corporate Seal)

Attest:

A. N. ROBERTS
Asst. Secretary

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
By
EDWARD N. HURLEY
President

(Corporate Seal)

Attest:

STEPHEN BOURNE
Secretary

Approved as to form	O. K.	O. K.	O. K
Date—5-4-18	U	C. P.	O.B.P.
W. H. W. Jr.		O. K.	
Legal Division		S.A.D. Jr.	
		B. C.	

EXHIBIT 10.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

for Construction of Vessels

at

Fore River, Mass.

Owner's Contract No. 299-S. C.

Owner's Hull Nos. 1670-71-72.

Contractor's Hull Nos. 1379-80-81.

Dated April 30th, 1918

CONTRACT made this thirtieth day of April, 1918 between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Fore River in the State of Massachusetts and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) three (3) steam, steel tank vessels of about nine thousand one hundred (9,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval of the Owner, or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels each of about nine thousand one hundred (9,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all

respects to the aforesaid plans and specifications including duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law, as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and aproved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purpose of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signa-

ture of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way

of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms

of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Boston, Massachusetts, of One Million Eight Hundred and Fifty Thousand Dollars ($1,850,000) for each of said tank vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of One Million Eight Hundred and Fifty Thousand Dollars ($1,850,000) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One Hundred and Eighty-five Thousand Dollars ($185,000) for such tank vessels. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for

profit of One Hundred and Eighty-five Thousand Dollars ($185,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit of One Hundred and Eighty-five Thousand Dollars ($185,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of One Hundred and Eighty-five Thousand Dollars ($185,000), determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram

(confirmed by mail) addressed to the United States Shipping Board, Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner,

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Fore River, Massachusetts or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interests of the owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By HOWARD COONLEY,
Vice-President.

(Corporate Seal)

Attest:

STEPHEN BOURNE,

Approved as to form — OK. D.H.C.

Date—5-20-18 — U.

W. H. W. Jr.
Legal Division

EXHIBIT 11.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels
at
Sparrow's Point Plant—Sparrow's Point, Md.

Owner's Contract No. 300—S. C.
Owner's Hull Nos. 1673-4-5
Contractor's Hull Nos: 4189-90-91

Dated April 30, 1918

CONTRACT made this thirtieth day of April, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrow's Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) three (3) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment in accordance with contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval of the Owner or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all

respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements and appurtenances of every kind, complete in all respects, and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said ship yard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Con-

tractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the re-

placement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as afore-

said; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of

actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot; vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States, Norfolk, Virginia, of TWO MILLION DOLLARS ($2,000,000.00) for each of said tank vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of TWO MILLION DOLLARS ($2,000,000.00) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of TWO HUNDRED THOUSAND DOLLARS ($200,000.00)

for such tank vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes; the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of TWO HUNDRED THOUSAND DOLLARS ($200,000.00), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit of TWO HUNDRED THOUSAND DOLLARS ($200,000.00) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten percent (10%) thereof as part payment on account of said profit, such payments of said ten percent (10%) to be continued until ninety percent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of TWO HUNDRED THOUSAND DOLLARS ($200,000.00), determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board, Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Sparrow's Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that

may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS
Vice President

(Corporate seal)

Attest:

A. N. ROBERTS,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By HOWARD COONLEY
Vice Pres.

(Corporate seal).

Attest:

STEPHEN BOURNE

Approved as to form O. K.

Date—5/20/18 U.

W. H. W. JR.
Legal Division

EXHIBIT 12.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels at
UNION PLANT
Alameda Works—Alameda, Cal.

Owner's Contract No. 301-S. C.
Owner's Hull Nos. 1676-1687, incl.
Contractor's Hull Nos. 5269-5280.

Dated April 30, 1918.

CONTRACT made this thirtieth day of April, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at San Francisco in the State of California and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) six (6) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, and six (6) cargo vessels of about eleven thousand eight hundred (11800) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner, must bear the acceptance and approval of the Owner, or its duly authorized representative) hereto attached and made a part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of six (6) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, and six (6) cargo vessels of about eleven thousand eight hundred (11800) tons dead weight carrying capacity, in accordance with

the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in

writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by-law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and /or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owners shall be in the United States of America and that the title to all material for the furtherance of work under his contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the

Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payment so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as afore-

said; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XVI specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination

of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at said Shipyard of Two Million One Hundred Thousand Dollars ($2,100,000.00) for each of said tank vessels and Two Million, Seventy-five Thousand Dollars ($2,075,000.00) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of Two Million, One Hundred Thousand Dollars ($2,100,000.00) or of any cargo vessel in the execution of the work reach or exceed the sum of Two Million, Seventy-five Thousand Dollars ($2,075,000.00) or such re-

vised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two Hundred Ten Thousand Dollars ($210,000.00) for such tank vessel and Two Hundred Seven Thousand Five Hundred Dollars ($207,500.00) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of Two Hundred Ten Thousand Dollars ($210,000.00) and Two Hundred Seven Thousand Five Hundred Dollars ($207,500) respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of Two Hundred Ten Thousand Dollars ($210,000.00) and Two Hundred Seven Thousand Five Hundred Dollars, ($207,500.00) respectively shall be paid as follows:

PROFITS WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten percent (10%) thereof as part payment on account of said profit, such payments of said ten percent (10%) to be continued until ninety percent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the

Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of Two Hundred Ten Thousand Dollars ($210,000.00) and Two Hundred Seven Thousand Five Hundred Dollars ($207,500.00) respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board, Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at San Francisco, Cal. or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In Witness Whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS,
Vice President

(Corporate Seal)

Attest:

A. N. Roberts,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION.

By HOWARD COONLEY,
Vice Pres.

(Corporate Seal)

Attest:

STEPHEN BOURNE

Approved as to form. O. K.

Date—5-20-18. U

W. H. W. Jr. D. H. C.

EXHIBIT 13.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

for Construction of Vessels

at

ELIZABETHPORT, NEW JERSEY

Owner's Contract No. 313—S. C.

Owner's Hull Nos. 1897-1906 inc.

Contractor's Hull Nos. 2138-2147 inc.

Dated May 15th, 1918

CONTRACT made this fifteenth day of May, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Elizabethport in the State of New Jersey and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, ten (10) tug boats, complete with propelling machinery, auxiliaries and complete equipment, in accordance with drawings and specifications furnished by the Owner and hereto attached and made a part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of ten (10) tug boats, in accordance with the plans and specifications aforesaid. The Construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

XV.

PAYMENT OF ACTUAL COSTS.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without

the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's office, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net cost, after deducting all discount obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs,

and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bond or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

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XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States, Brooklyn, in the City of New York, of Three Hundred Thousand Dollars ($300,000) for each of said vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Three Hundred Thousand Dollars ($300,000) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Thirty Thousand Dollars ($30,000) for such vessel.

Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of Thirty Thousand Dollars ($30,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS, WHEN PAYABLE.

Said fixed sums for profit of Thirty Thousand Dollars ($30,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of Thirty Thousand Dollars ($30,000), determined as hereinbefore provided, shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Elizabethport, New Jersey, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

H. E. LEWIS,
Vice-President

(Corporate Seal)

Attest:

A. N. ROBERTS,
Assistant Secretary

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

HOWARD COONLEY,
Vice-President

(Corporate Seal)

Attest:

C. BRADFORD FRALEY,
Asst. Sec.

Approved:

T. ED. SKEEL,
Asst. Comptroller

Approved:

DANIEL H. COX,
Manager Division of Steel Ship Construction

Approved as to form:

Date—6-15-18,
WILLIAM H. WHITE, JR.,
Legal Division.

EXHIBIT 14.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

WILMINGTON, DELAWARE

Owner's Contract No. 314

Owner's Hull Nos.

(Cargo Vessels 1975 to 1981 inc.
(Tankers 1982 to 1984 inc.

Contractor's Hull Nos.

(Cargo Vessels 3463 to 3469 inc.
(Tankers 3470 to 3472 inc.

Dated May 15th, 1918.

CONTRACT made this fifteenth day of May, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor),

party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Wilmington, in the State of Delaware and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) three (3) steam, steel tank vessels of about seven thousand five hundred (7,500) tons dead weight carrying capacity each, and seven (7) cargo vessels of about five thousand one hundred (5,100) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner, must bear the acceptance and approval of the Owner or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of

about seven thousand five hundred (7,500) tons dead weight carrying capacity, and seven (7) cargo vessels of about five thousand one hundred (5,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil-tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all

material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

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XV.

PAYMENTS OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and

substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposit shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract. The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All state-

ments and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor

by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any

dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

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XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of One million five hundred and sixty thousand dollars ($1,560,000) for each of said tank vessels and of Nine hundred and eighty thousand dollars ($980,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach

or exceed the sum of One million five hundred and sixty thousand dollars ($1,560,000) or of any cargo vessel in the execution of the work reach or exceed the sum of Nine hundred and eighty thousand dollars ($980,000) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One hundred and fifty-six thousand dollars ($156,000) for such tank vessel and Ninety-eight thousand dollars ($98,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of One hundred and fifty-six thousand dollars ($156,000) and Ninety-eight thousand dollars ($98,000) respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit of One hundred and fifty-six thousand dollars ($156,000) and Ninety-eight thousand dollars ($98,000) respectively shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed

sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of One hundred and fifty-six thousand dollars ($156,000) and Ninety-eight thousand dollars ($98,000) respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Wilmington, Delaware, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check.

addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS,
Vice-President.

(Corporate seal)

Attest:

A. N. ROBERTS
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
by

HOWARD COONLEY
Vice-President.

(Corporate seal)

Attest:

C. BRADFORD FRALEY
Asst. Sec.

Approved as to form

Date—6/15/18

WILLIAM H. WHITE, JR.
Legal Division.

Approved:

DANIEL H. COX
Manager Division of
Steel Ship Construction.

Approved:

T. ED. SKEEL
Asst. Comptroller.

EXHIBIT 15.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Plant and Vessels

Owner's Contract No. 340—S. C.

Owner's Hull Nos. 1985—2004 incl.

Contractor's Hull Nos. 5281—5300 incl.

Dated June 21st, 1918.

CONTRACT made this 21st day of June, 1918, between Bethlehem Shipbuilding Corporation, Limited, a corporation organized under the laws of the State of Delaware, party of the first part (herein called the Superintendent), and United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, party of the second part, representing the United States of America (herein called the Owner):

Whereas, the Owner is about to acquire certain real estate located at Alameda, near the City of San Francisco, State of California, suitable for a shipyard site; and,

Whereas, the existing war with Germany requires the construction at the earliest possible time of a large number of vessels suitable for the transportation of troops; and,

Whereas, the Superintendent is experienced in the construction of such vessels, and has an organization fully developed and ready to take charge of the building of a shipyard and the construction therein of the troop vessels hereinafter contracted for; and,

Whereas, the Superintendent's existing facilities are sufficient for its present contract needs, but it is nevertheless willing to construct troop ships for the United States when the facilities therefor have been provided by the Owner; and,

Whereas, the Superintendent is willing to supervise and superintend the work necessary in the construction of such a shipyard, without charge therefor to the Owner, over and above the actual cost to the Superintendent.

Now, therefore, in consideration of the premises and the mutual agreements herein, the parties hereto covenant and agree to, and with each other, as follows:

I.

SHIPYARD.

The Superintendent agrees to forthwith proceed with the erection and equipping of the shipbuilding

plant upon the property now owned, or to be acquired, by the Owner at its own expense, located at Alameda, near the City of San Francisco, State of California. The layout of said plant, the design of the buildings and shipways and the construction thereof, the machinery and equipment therefor, shall be generally in accordance with the plans and specifications submitted by the Superintendent and approved by the Owner, or such modifications thereof as the Owner may direct. The shipbuilding plant shall comprise ten (10) shipbuilding ways, and all buildings, equipment and appurtenances necessary for the establishment of a complete shipyard suitable for the construction of the twenty (20) vessels herein provided for in accordance with the plans and specifications for said vessels hereafter referred to. Such shipbuilding plant shall contain, among other things, adequate water supply and a proper fire protection system, and all other necessary equipment and appurtenances.

II.

VESSELS.

The Superintendent shall, as soon as the shipyard is ready, proceed to construct in accordance with the Owner's plans and specifications hereto attached and made a part of this contract under the rules and regulations of the American Bureau of Shipping, twenty (20) steel steam vessels suitable for and equipped to transport troops. Said vessels to be of 20,600 tons displacement, each designed to carry about 3,000 troops with a speed of about 17 knots, and at least 12,000 horse-power. Such vessels to be complete, with propelling machinery, auxiliaries, equipment,

full military requirements, and accommodations for troops, all in accordance with the said drawings and specification.

* * * * * * * *

VI.

ORDERS FOR MATERIALS.

The Owner shall have full control, through its duly authorized representatives, of all orders for materials, machinery, equipment, supplies and other purchases and commitments made under this agreement (including establishment of extensions, increases, and additions to plants and property), and all contracts and orders placed by the Superintendent shall be in the name of the Owner by the Superintendent, and shall be first approved in writing by the Owner, and it is understood that the Superintendent shall assume no pecuniary liability under or by reason of such obligation where made with the written approval of the Owner.

The materials and parts to be used in the construction of these vessels shall be ordered by the Superintendent, which will receive the same and make payment from the funds deposited by the Owner, as provided for in Article XVIII, direct to the individual, firm or corporation with whom the order has been placed at the price stipulated in the order and in accordance with such terms of payment as may be arranged by the Superintendent with such individual, firm or corporation. The amounts so paid for the material and parts will enter into the actual cost of the plant and vessels, as hereinafter provided for. Such materials and parts shall be of the quality and characteristics best adapted to the

various purposes for which they may be used, and shall conform to the requirements and specifications of the American Bureau of Shipping. The Superintendent shall supply such assistance as may be required to the American Bureau of Shipping and by the inspectors of the Owner in making any tests and inspections of such material and parts at the shipyard considered necessary by such inspectors or surveyors.

* * * * * * * * *

XIII.

LABOR AND WAGES.

The Superintendent will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. If by reason of any such instruction the cost of any vessel hereunder shall be increased or decreased, then the estimated basic cost as hereinafter provided for such vessel shall be increased or decreased by such amount. Such amount shall be agreed upon by the parties, and, if not agreed upon, shall be determined as provided in Article XXIX hereof. The owner will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract.

It is agreed that the wages paid shall be those fixed for the San Francisco district by the Shipbuilding Wage Adjustment Board effective November 4th, 1917, and the increase therein effective February 1st, 1918. In the event that wage scale shall be increased or decreased the estimated basic cost shall be increased or decreased accordingly. Sun-

day, holiday, or overtime work shall not be resorted to, unless directed by the Owner, in which event the estimated basic cost of the vessel or vessels upon which such work has been directed shall be increased accordingly.

* * * * * * * *

XX.

ACTUAL COST OF PLANT.

For the purposes of this contract, it is understood that the cost of the construction of the shipyard shall consist of the following and items similar thereto in principle:

1. The net cost of material, supplies, machinery, tools, equipment and parts thereof, after deducting all discounts, rebates, etc., obtained, entering into or expended in the execution of the work, including freight and other transportation costs.

2. Cost of labor, directly and exclusively engaged in the execution of the work.

3. Cost of all equipment necessary for carrying on the work hereunder, including reasonable rentals paid for equipment which may be rented instead of purchased.

4. The cost of supplies and equipment consumed in the work.

5. The cost at salary rates, of men in the engineering or drafting and accounting departments either in the office or in the field for such time as said men shall actually and exclusively be engaged in the work hereunder. All salaries paid shall be in accordance with those paid for similar work in

the immediate vicinity of said shipyard and shall at all times be subject to adjustment and approval by the Owner.

6. The cost of permits, royalties, testing fees and other similar items of expense incidental to and necessary in the work.

7. Cost of casualty and liability insurance, also fire and other insurance, if any, as the Owner may approve and require.

8. The cost of replacing any part of the work which may be lost or destroyed or partially lost or destroyed which is not compensated by insurance, and the loss of which has not resulted from the wilful fault or gross negligence of the Superintendent.

9. All payments made under orders and contracts approved by the Owner as provided for in Article VI pertaining to the construction and equipment of said shipyard, including payments to architects and builders.

10. It is understood and agreed that parts and portions of the shipyard will be completed or ready for use before others, and that as soon as said parts are so completed or used, a proper part or portion of the overhead expense in connection therewith will be chargeable to the cost of the vessels. The proportion of said overhead to be charged to the shipyard and to the vessels shall be agreed upon by the Superintendent and the Owner, and in the event that they are unable to so agree, same shall be determined as hereinafter provided in Article XXV.

XXI.

ACTUAL COST OF VESSELS.

For the purpose of this contract, actual cost of the construction of the vessels shall consist of the following and items similar thereto in principle:

(a) The net costs, of labor and materials, machinery, equipment, and supplies (after deducting all discounts obtained) furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under the contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this

contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XXIX.

(g) The items of cost provided for in sub-divisions (e) and (f) shall not apply to the yard and equipment paid for by the Owner.

* * * * * * * *

XXIV.

SUPERINTENDENT'S COMPENSATION.

The Superintendent is to be paid for its services the sum of Three Hundred Thousand Dollars ($300,000) for each and every vessel constructed and delivered under this contract, and in addition thereto the Superintendent is to receive one-half of any saving realized by economy or otherwise in constructing the vessel, as hereinafter provided. It is hereby agreed that for the purpose of determining the amount, if any, of any saving, there may be in the construction of each of said vessels, the sum of $4,464,000 shall be taken and considered as a basic price for each vessel, subject to increase or decrease as herein provided. In determining whether or not there has been any saving, the actual cost of each of said twenty (20) vessels shall be determined in ac-

cordance with the provisions hereof. If the actual cost so determined of any of said twenty (20) vessels is less than the estimated basic cost thereof revised as aforesaid, then one-half of the difference between said basic cost revised as aforesaid and said actual cost shall be paid to the Superintendent as additional compensation hereunder. Should the actual cost of said vessel equal or exceed the total basic cost thereof revised as aforesaid, the excess, if any, is to be paid by the Owner.

The foregoing provisions of this Article are subject to the condition that the amount that shall be paid to the Superintendent on account of any such saving on any of said twenty (20) vessels shall not exceed $200,000.

In the event that the Shipbuilding Wage Adjustment Board or other lawful authority shall increase or decrease the scale of wages referred to in Article XIII; and in the event of any change in the plans and specifications which shall increase or decrease the cost of the vessels or any of them, the estimated basic cost of the vessel or vessels affected thereby shall be increased or decreased by such an amount as the Vice-President of the Owner shall determine upon, subject to arbitration as provided by Article XXIX.

There shall be paid as a part of the compensation of the Superintendent each month 7½% of the aggregate of the expenditures made for the actual cost of the vessels during the preceding month until the Superintendent shall have been paid ninety per cent. (90%) of its fixed compensation of Three Hundred Thousand Dollars ($300,000) per vessel. The bal

ance, if any, of its compensation of Three Hundred Thousand Dollars ($300,000) per vessel shall be paid upon the completion and acceptance by the Owner of each of said vessels.

In case the Owner shall for any reason cancel this contract and terminate the work hereunder, it shall give to the Superintendent at least sixty (60) days notice thereof, and in that event the Owner shall pay to the Superintendent in addition to cost of the construction of said shipbuilding plant and of the work on the vessels to be constructed hereunder, including the cost of all materials then on hand for such work, five per cent. (5%) of that part of such cost as applies to the construction of said shipbuilding plant and seven and one-half per cent. (7½%) of that part which applies to the construction of said vessels which may then be uncompleted. Compensation for all completed vessels shall be paid as herein provided.

* * * * * * * * *

XXXIII.

PARTICIPATION IN PROFITS:

No member of, or delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to this contract so far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats., 1109).

* * * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate

officers and their corporate seals to be hereunto affixed and attached on the day and year above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LIMITED

By J. W. POWELL,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By HOWARD COONLEY,
Vice-President.

(Corporate Seal)

Attest:

STEPHEN BOURNE,
Secretary.

Approved as to form

Date—6/21/18

William H. White, Jr.
Legal Division

EXHIBIT 16

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Six Troop Ships
at
Sparrow's Point, Maryland.

Owner's Contract No. 465-S. C.
Owner's Hull Nos. 2505-2510
Contractor's Hull Nos. 4195-4200

Dated July 15th, 1918

CONTRACT

CONTRACT made this fifteenth day of July, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a cor-

poration organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrows' Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), six (6) troop ships of about ten thousand (10,000) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Owner's drawings and specifications hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of six (6) troopships of about ten thousand (10,000) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and

specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on basis set forth in Article XIX.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence, and such powers as it may have by law, to assist the Contractor to secure, with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whosoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without

the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of

bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms

of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus, the definite sum for profit hereinafter in this Article provided for, based upon an estimated base co[illegible] to the Contractor, at the wage schedule as adopted by the Shipbuilding Labor Adjustment Board, and in force on January 3, 1918, at the Navy Yard of the United States, Norfolk, Virginia, and material schedules and freight rates attached hereto and forming part of this contract, see Exhibit "A," of Four million one hundred and sixty thousand dollars ($4,160,000) for each of said vessels. Should the rate of wages actually paid by the Contractor be increased or decreased, by the direction of or with the approval of the Owner, from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessels. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Four million one hundred and sixty thousand dollars ($4,160,000) or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Three hundred and twenty thousand dollars ($320,000) for such vessel. Said sum for profit to be increased, on account of increase in cost due to changes from contract plans and specifications, in proportion to the amount that

fixed sum for profit bears to the base cost. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Three hundred and twenty thousand dollars ($320,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

The foregoing provisions of this Article are subject to the condition that the amount that shall be paid to the Contractor on account of any such saving on any of said six (6) vessels shall not exceed Two hundred thousand dollars ($200,000). Said fixed sums for profit of Three hundred and twenty thousand dollars ($320,000) shall be paid as follows:

PROFITS WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said

fixed sums for profit and any additional profit over and above said sums of Three hundred and twenty thousand dollars ($320,000), determined as hereinbefore provided, shall become immediately due and payable.

* * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at 140 North Broad St., Philadelphia, Pa., or be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Sparrow's Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the contractor by mail at Bethlehem, Penna.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may

arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

J. W. POWELL
Vice-President.

(Corporate seal)

Attest:

A. N. ROBERTS
Assistant Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

CHARLES PIEZ
Vice President.

(Corporate seal)

Attest:

WAYNE V. O'NEIL
Assistant Secretary.

Approved

CUTHELL

Approved
8/31/18

A. V. Bamillon
Act'g. Manager, Contract Division.

Approved
9/19/18

Daniel H. Cox
A. B. N. Manager Divison of
Steel Ship Construction.

Approved

D. H. Bender.

EXHIBIT 19.

CONTRACT

BETWEEN

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

AND

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

FOR

Six (6) Twelve Thousand (12,000) H. P. Curtis Marine Propelling Equipment with Falk Gears, Complete with Spares and Accessories
Turbines to be constructed at Fore River Plant, Quincy, Mass.
Gears to be constructed by Falk Company, Milwaukee, Wis.

Owner's Contract No. 4989

Contractor's Manufacturing Order No. FS-1509

Dated September 30, 1919

CONTRACT, made this day 30th of September, 1919, between the Bethlehem Shipbuilding Corporation, Ltd., a Corporation organized under the law of the State of Delaware, party of the first part (herein called the Contractor), and the United States

Shipping Board Emergency Fleet Corporation, a Corporation organized under the laws of the District of Columbia, herein called the Owner, acting for and on behalf of America (herein called United States, party of the second part), for valuable considerations, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual agreement of the parties, it is agreed as follows:

I.

WORK TO BE DONE.

1. The Contractor shall construct or cause to be constructed at its own risk and expense in accordance with its own drawings (subject to prior approval by the Owner, and after such approval to become a part of this contract), and in accordance with specifications attached hereto, and made a part of this contract, under the rules and regulations of the American Bureau of Shippinig, so far as such rulings are applicable, six (6) twelve thousand (12,000) H. P. Curtis Marine Propelling Equipment with Falk gears, and complete with spares and accessories, all to be in accordance with the said specifications. For the purpose of this contract, a "unit" shall be understood to consist of one (1) high pressure turbine, one (1) low pressure and astern turbine, and one (1) reduction gear, all complete with valves, piping, etc. covered by this contract, and be of 6000 S. H. P. An "equipment shall be understood to consist of two (2) "units" of 12000 S. H. P."

DELIVERIES.

2. The Contractor shall deliver the said turbines f. o. b. cars Fore River, Mass., and shall deliver the

gears f. o. b. cars Milwaukee, Wisconsin, in accordance with the following schedule:

One (1) 12,000 H. P. Equipment on or before March 15, 1920.

One (1) 12,000 H. P. Equipment on or before April 10, 1920.

One (1) 12,000 H. P. Equipment on or before May 5, 1920.

One (1) 12,000 H. P. Equipment on or before June 1st, 1920.

One (1) 12,000 H. P. Equipment on or before June 25th, 1920.

One (1) 12,000 H. P. Equipment on or before July 20th, 1920.

* * * * * * * * *

II.

PAYMENTS.

1. In consideration of the performance by the Contractor of the obligations under this contract, the Owner agrees to pay therefor a lump sum purchase price of one million, six hundred sixty-one thousand, six hundred and seventy ($1,661,670) Dollars for all of the six (6) equipments contracted for herein, and forty thousand, six hundred and fifty ($40,650) Dollars for all of the six (6) sets of spares accompanying the turbine equipments delivered complete f. o. b. cars as set forth in Section 2 of Article I, or one million, seven hundred and two thousand, three hundred and twenty ($1,702,320) Dollars for the six (6) turbine equipments complete with spares.

2. The contract price above provided for is to be paid to the Contractor in the following manner:

(a) Twenty percent (20%) of the pro-rated price of the turbines included in an equipment when main castings and forgings for the turbines in each equipment (as per list to be furnished by the Bethlehem Shipbuilding Corporation) are received in Contractor's shop ready for machining.

(b) Twenty percent (20%) of the pro-rated price of the turbines included in an equipment when all parts for turbines of each equipment are assembled and the turbines placed on the testing blocks ready for test.

(c) Twenty percent (20%) of the pro-rated price of the reduction gears included in an equipment upon completion and shipment of the gears in each equipment.

(d) Thirty percent (30%) of the pro-rated price of the turbines, accessories, and spares, included in each equipment upon shipment or storage of the turbines, accessories, and spares of each equipment.

(e) The balance of ten percent (10%) of the pro-rated price of each equipment, including accessories and spares, within thirty (30) days after shipment or storage of each complete equipment, including accessories and spares.

* * * * * * * * *

XII.

MEMBER OF CONGRESS NOT TO BENEFIT.

No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any

share or part of this contract, or to any benefit that may arise therefrom; but this article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats., 1109).

XIII.

CHECKS.

Payment hereunder shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

In witness whereof, the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated, in triplicate.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By J. W. POWELL,
Vice-President.

(Corporate seal)

Attest:

R. B. McMATH,
Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

By J. L. ACKERSON,
Vice-President.

(Corporate Seal)

Attest:

A. W. COOPER,
Asst. Secretary.

Approved as to form

WATSON H. MAGILL
Assistant Counsel

Approved

Supply & Sales Division
G. H. S. ROLLASON
Mgr.

Approved

ALEX MURDOCK
Vice Chairman, Cancellations,
Claims and Contracts Board

Approved

A. C. WILKIE
Acting Manager Ship
Construction Division,
by A. CONTI

W. H. E.
C. J. W. (?)

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 11970. December Sessions, 1925

Bethlehem Shipbuilding Corporation, Ltd., Plaintiff,
v.
United States Shipping Board Emergency Fleet Corporation, Defendant

AFFIDAVIT OF DEFENSE WITH SET-OFF AND COUNTERCLAIM

(Filed January 10, 1927)

United States of America,
District of Columbia,
City of Washington, ss:

J. Harry Philbin, being duly sworn according to law, deposes and says that he is the vice president of the United States Shipping Board Emergency Fleet Corporation, the defendant in the above entitled action; that he is duly authorized to make this affidavit on its behalf, and that said corporation has a full, just, true and legal defense to the whole of plaintiff's claim of the following nature and character, to wit:

First. Defendant denies that any sum whatsoever is due or owing to the plaintiff.

DEFENSE TO THE FIRST CAUSE OF ACTION
(Contract 177 S. C.)

Second. In answer to Paragraph Second of the Statement of Claim, defendant avers that on or

shortly after the 5th day of January, 1918 (and alleges that the actual date was February 1st, 1918), plaintiff and defendant made and entered into the contract in writing dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

Third. In answer to Paragraph Third of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on defendant, or its principal, for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

Fourth. In answer to Paragraph Fourth of the Statement of Claim, defendant avers that Article XXVIII of said contract and plaintiff's Exhibits 1-B and 1-C speak for themselves, but defendant denies that the same are legally binding on defendant for the reasons more particularly set forth hereafter in Paragraphs Thirty-eighth to Forty-first of the defendant's Set-off and Counterclaim.

Fifth. In answer to Paragraph Fifth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, but the defendant denies that the plaintiff duly performed

all the terms and conditions of the said contracts so far as said contracts relate to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Sixth. In answer to Paragraph Sixth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $2,508,502.11 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $1,782,136.31, and no more.

Seventh. Admitted.

Eighth. In answer to Paragraph Eighth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract was $28,008,997.39, and defendant avers that said cost so revised was $27,282,631.59, and no more, made up as follows:

Estimated cost	$25,440,000.00
Costs resulting from wage increases	1,782,136.31
Costs resulting from changes in plans and specifications	60,495.28
Total revised estimated cost	27,282,631.59

Ninth. In answer to Paragraph Ninth of the Statement of Claim, defendant avers that the total cost of the special improvements, tools, and equipment there referred to, was $1,550,000.00. The defendant avers that of this sum, the defendant paid the plaintiff $1,549,848.68 and that the cost of said improvements to the plaintiff was not more than $152.32. In further answer, defendant refers to the averments set forth in Paragraph Fifteenth hereof

and in Paragraphs Ninth to Forty-first of defendant's set-off and counterclaim.

Tenth. In answer to Paragraph Tenth of the Statement of Claim, defendant refers to the averment set forth in Paragraph Fifth hereof.

Eleventh. In answer to Paragraph Eleventh of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred to in said paragraph was $22,469,243.85, or any other or greater sum than $22,466,351.20.

Twelfth. In answer to Paragraph Twelfth of the Statement of Claim, defendant denies that the aggregate cost to the plaintiff of the various items there referred to was more than $152.32.

Thirteenth. In answer to Paragraph Thirteenth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $22,469,243.85 and that the actual cost, when reduced by $53,859.63 was $22,415,384.22. Defendant avers that the actual cost was $22,466,351.20, which when reduced by $53,859.63 is $22,412,491.57 and no more.

Fourteenth. In answer to Paragraph Fourteenth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $5,593,613.17 or was any other or greater

sum than $4,870,140.02, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Fifteenth. In answer to Paragraph Fifteenth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $744,998.36 as stated in Paragraph Fifteenth or any other sum or sums of money from defendant or its principal. The defendant alleges that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $2,333,603.03 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contracts, made up as follows:

Payments to Plaintiff:		
On account of actual cost of construction	$22,792,960.96	
On account of profit to plaintiff	4,248,242.43	
Total		$27,041,203.39
Credits to Plaintiff:		
Total actual cost of construction	$22,466,351.20	
Profit to plaintiff, not to exceed 10 per cent of $22,412,491.57	2,241,249.16	
Total		24,707,600.36
Overpayment to plaintiff		2,333,603.03

Defendant further avers that acting in behalf of the United States it has paid the plaintiff with

funds of the United States on account of said special improvements, tools and equipment constructed and provided at a total cost of $1,550,000.00 as aforesaid, the sum of $1,549,848.68.

Defendant avers that for reasons more particularly set forth hereafter in Paragraphs Ninth to Forty-first of the defendant's Set-off and Counterclaim, the provisions of said contracts providing for profit to the plaintiff as well as certain provisions of Article XXVIII thereof relating to special improvements, tools, and equipment are invalid and unenforceable and said principal is entitled to recover from plaintiff not only the said overpayment of at least $2,333,603.03 but also the fair and reasonable value of such special improvements, tools and equipment which the defendant avers is $1,549,848.68, making a total sum of $3,883,451.71 due from plaintiff.

Sixteenth. In answer to Paragraph Sixteenth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant or its said principal, and upon the contrary avers that plaintiff has been largely overpaid in connection with said contracts as already set forth.

In further answer to the plaintiff's first cause of action, defendant refers to the matters set forth hereafter in the Defendant's Set-Off and Counterclaim, and avers that the said contracts were made by defendant upon behalf of its principal, the United States of America, as the plaintiff well knew; that all acts done or performed by defendant in connection therewith were done or performed upon behalf of its said principal, that all payments thereunder were made upon behalf of its said principal, and

with the funds of said principal, and were usually paid to plaintiff by said principal upon checks drawn by defendant upon the Treasurer of the United States, and that said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE SECOND CAUSE OF ACTION

(Contract 178 S. C.)

Seventeenth. In answer to Paragraph Seventeenth of the Statement of Claim, defendant admits that on or shortly after the 5th day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into the contract in writing, dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its said principal, the United States of America, for which said vessels were to be constructed, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-off and Counterclaim.

Eighteenth. In answer to Paragraph Eighteenth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on the defendant, or its principal, for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

Nineteenth. In answer to Paragraph Nineteenth of the Statement of Claim, defendant avers that

Article XXVIII of said contract and plaintiff's Exhibit 2-B speak for themselves but defendant denies that the same are legally binding on defendant for the reasons more particularly set forth hereafter in Paragraphs Thirty-eighth to Forty-first of the defendant's Set-off and Counterclaim.

Twentieth. In answer to Paragraph Twentieth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of the said contracts so far as said contracts relate to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Twenty-first. In answer to Paragraph Twenty-first of the Statement of Claim, the defendant denies that the increase in labor cost resulting from wage increases amounted to $1,331,183.17, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $5,220.04 and no more.

Twenty-second. Admitted.

Twenty-third. In answer to Paragraph Twenty-third of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $10,406,142.17, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $9,080,179.04 and no more, made up as follows:

Estimated cost	$8,886.000.00
Costs resulting from wage increases	5,220.04
Costs resulting from changes in plans and specifications	188,959.00
Total revised estimated cost	9,080,179.04

Twenty-fourth. In answer to Paragraph Twenty-fourth of the Statement of Claim, defendant avers that the total cost of the special improvements, tools, and equipment there referred to was $141,000.00. Defendant alleges that of this sum the defendant paid the plaintiff $140,711.02 and that the cost of said improvements to the plaintiff was not more than $288.98. In further answer, defendant refers to the averments set forth in Paragraph Thirtieth hereof and Paragraphs Ninth to Forty-first of defendant's set-off and counter-claim.

Twenty-fifth. In answer to Paragraph Twenty-fifth of the Statement of Claim, defendant refers to the averments set forth in Paragraph Twentieth hereof and further denies that any audit was had of the revised estimated cost as alleged in the complaint.

Twenty-sixth. In answer to Paragraph Twenty-sixth of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $9,993,375.26, or any other or greater sum than $9,792,015.63.

Twenty-seventh. In answer to Paragraph Twenty-seventh of the Statement of Claim, the defendant denies that the aggregate cost to the plaintiff of the various items there referred to was more than $288.98.

Twenty-eighth. In answer to Paragraph Twenty-eighth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $9,993,375.26 and that the actual cost, when reduced by $34,452.84 was $9,958,922.42. Defendant avers that the actual cost was $9,792,015.63, which when reduced by $34.452.84 is $9,757,562.79 and no more.

Twenty-Ninth. In answer to Paragraph Twenty-ninth of the Statement of Claim, defendant denies that $447,219.75 or any other amount represents the amount by which the revised base cost of said vessels was less than the actual cost thereof reduced as aforesaid and the defendant avers that the actual cost was in excess of the estimated cost in the amount of $677,383.75.

Thirtieth. In answer to Paragraph Thirtieth of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $385,463.87, or any other sum or sums of money from the defendant or its principal. The defendant avers that for all matters done or performed by the plaintiff in connection with the aforesaid contract, including the construction and providing of the special improvements, tools, and equipment referred to in said paragraph, the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $59,749.35 in excess of the

aggregate amount which the plaintiff was entitled to receive, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	9,803,700.22	
On account of profit to plaintiff	883,110.02	
On account of plant improvements	140,711.02	
Total		$10,827,521.26

Credits to Plaintiff:

Total actual cost of construction	$9,792,015.63	
Profit to plaintiff not to exceed 10 per cent of $9,757,562.79	975,756.28	
Total		10,767,771.91
Overpayment to plaintiff		59,749.35

Defendant avers that on account of said extensions, tools, equipment, and installations the defendant acting in behalf of the United States, its principal, has paid the plaintiff with funds of the United States the sum of $140,711.02. Defendant avers that for reasons more particularly set forth hereafter in Paragraphs Ninth to Forty-first of the defendant's Set-Off and Counterclaim the provisions of said contract providing for profit to the plaintiff as well as certain provisions of Article XXVIII thereof relating to said special improvements,

tools, and equipment are invalid and unenforceable, and said principal is entitled to a credit from plaintiff for the fair and reasonable value thereof which the defendant avers is $140,711.02, as set forth above.

Thirty-first. In answer to Paragraph Thirty-first of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to the plaintiff by the defendant or its said principal and upon the contrary avers that the plaintiff has been overpaid in connection with said contract the sum of at least $59,749.35 as already set forth.

In further answer to the plaintiff's Second Cause of Action, the defendant refers to the matters set forth hereafter in the defendant's Set-Off and Counterclaim and avers that said contract was made and all acts thereunder were done or performed by defendant in connection therewith and that all payments thereunder were made upon behalf of the defendant's principal, the United States of America; and with the funds of said principal, all of which was well known to the plaintiff and that said principal is the only party which may properly be sued by plaintiff in connection with said contract.

DEFENSE TO THE THIRD CAUSE OF ACTION

(Contract 179 S. C.)

Thirty-second. In answer to Paragraph Thirty-second of the Statement of Claim, defendant admits that on or shortly after the fifth day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into a certain contract in writing, dated December

31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of defendant's Set-off and Counterclaim.

Thirty-third. In answer to Paragraph Thirty-third of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant, or its principal, for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Thirty-fourth. In answer to Paragraph Thirty-fourth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Thirty-fifth. In answer to Paragraph Thirty-fifth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $851,436.38 and avers that the total increase in the labor cost resulting

from wage increases authorized by it amounted to $1,069.69 and no more.

Thirty-sixth. Admitted.

Thirty-seventh. In answer to Paragraph Thirty-seventh of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $7,085,764.38 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $6,235,397.69 and no more, made up as follows:

Estimated cost	$6,210,000.00
Costs resulting from wage increase	1,069.69
Costs resulting from changes in plans and specifications	24,328.00
Total revised estimated cost	6,235,397.69

Thirty-eighth. In answer to Paragraph Thirty-eighth of the Statement of Claim, defendant refers to the averments set forth in Paragraph Thirty-fourth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Thirty-ninth. Admitted.

Fortieth. In answer to Paragraph Fortieth of the Statement of Claim, defendant admits the figures therein contained, but the defendant denies that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff.

Forty-first. In answer to Paragraph Forty-first of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,533,219.31 or was any other or greater sum than $682,852.62, and defendant avers that for the reasons hereinafter stated the plaintiff was not and is not entitled to receive or retain any part of said sum.

Forty-second. In answer to Paragraph Forty-second of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $210,531.21 as stated in Paragraph Forty-second or any other sum or sums of money from defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff, with funds of the United States, at least $600,823.93 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contracts, made up as follows:

Payments to plaintiff

On account of actual cost of construction	$5,657,186.58	
On account of profit to plaintiff	1,055,222.27	
Total		6,712,408.85

Credits to Plaintiff

Total actual cost of construction	5,556,330.41

Profit to plaintiff not to exceed 10 per cent of $5,552,543.07	555,254.51	
Total		6,111,584.92
Overpayment to plaintiff		600,823.93

Defendant avers that for reasons hereinafter set forth in said Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff, are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $600,823.93.

Forty-third. In answer to paragraph Forty-third of the Statement of Claim, defendant denies that any sum whatsoever is due or owing by defendant or its principal to the plaintiff, and in further answer refers to the matters set forth in the Defendant's Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed and all payments thereunder were made by defendant upon behalf of its said principal, and with the funds of said principal, all of which was well known to the plaintiff, and that said principal is the only party which may properly be sued by plaintiff in connection with said contract.

DEFENSE TO THE FOURTH CAUSE OF ACTION

(Contract 182 S. C.)

Forty-fourth. In answer to Paragraph Forty-fourth of the Statement of Claim, defendant admits

that on or shortly after the fifth day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into a certain contract in writing, dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-Off and Counterclaim.

Forty-fifth. In answer to Paragraph Forty-fifth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Forty-sixth. In answer to Paragraph Forty-sixth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of Defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Forty-seventh. In answer to Paragraph Forty-seventh of the Statement of Claim, defendant refers to the averment set forth in Paragraph Forty-sixth hereof.

Forty-eighth. In answer to Paragraph Forty-eighth of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $11,354,258.26, or any other or greater sum than $11,348,258.26.

Forty-ninth. In answer to Paragraph Forty-ninth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $11,354,258.26 and that the actual cost, when reduced by $152,598.37 was $11,201,659.89. Defendant avers that the actual cost was $11,348,258.26, which when reduced by $152,598.37 is $11,195,659.89 and no more.

Fiftieth. In answer to Paragraph Fiftieth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $178,989.03 or any other sum or sums of money from the defendant or its principal and the defendant avers that for all matters done or performed by plaintiff in connection with the contract in question there became due plaintiff a net credit of $172,389.03, and no more, made up as follows:

Credits to Plaintiff

Total actual cost of construction	$11,348,258.26	
Profit to plaintiff equal to 10 per cent of $11,195,659.89	1,119,565.99	
Total		$12,467,824.25

Payments to Plaintiff

On account of actual cost of construction	$11,495,435.22	
On account of profit to plaintiff	800,000.00	
Total		12,295,435.22
Underpayment to plaintiff		172,389.03

Fifty-first. Defendant admits that plaintiff is entitled to a credit in the said amount of $172,389.03 against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-Off and Counterclaim, but avers that for reasons therein referred to, said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE FIFTH CAUSE OF ACTION

(Contract 183 S. C.)

Fifty-second. In answer to Paragraph Fifty-second of the Statement of Claim, defendant admits that on or shortly after the 5th day of January,

1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into the contract in writing dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of the defendant's Set-Off and Counterclaim.

Fifty-third. In answer to Paragraph Fifty-third of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Fifty-fourth. In answer to Paragraph Fifty-fourth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Fifty-fifth. In answer to Paragraph Fifty-fifth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $776,639.20 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to nothing.

Fifty-sixth. Admitted.

Fifty-seventh. In answer to Paragraph Fifty-seventh of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $6,358,848.20, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $5,582,209.00, and no more, made up as follows:

Estimated cost	$5,595,000.00
Costs resulting from wages increases	None.
Savings in cost affected by changes in plans and specifications	*12,791.00*
Total revised estimated cost	5,582,209.00

Fifty-Eighth. In answer to Paragraph Fifty-eighth of the Statement of Claim, defendant refers to the averments set forth in Paragraph Fifty-fourth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Fifty-ninth. In answer to Paragraph Fifty-ninth of the Statement of Claim, defendant denies that the total actual cost of said vessels, after applying all credits referred in said paragraph was $5,314,448.66, or any other or greater sum than $5,307,830.87.

Sixtieth. In answer to Paragraph Sixtieth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $5,314,448.66 and that the actual cost, when reduced by $19,965.44 was $5,294,483.22. Defendant avers that the actual cost was $5,307,830.87, which when reduced by $19,965.44 is $5,287,865.43 and no more.

Sixty-first. In answer to Paragraph Sixty-first of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,964,364.98 or was any other or greater sum than $294,343.57, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Sixty-second. In answer to Paragraph Sixty-second of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $131,207.09 or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $433,806.65, in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contracts, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$5,368,867.81	
On account of profit to plaintiff	901,556.25	
Total		$6,270,424.06

Credits to Plaintiff:

Total actual cost of construction	$5,307,830.87	
Profit to plaintiff, not to exceed 10 per cent of $5,287,865.43	528,786.54	
Total		5,836,617.41
Overpayment to plaintiff		433,806.65

Defendant avers that for reasons set forth in said Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff, are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $433,806.65.

Sixty-third. In answer to Paragraph Sixty-third of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant or its said principal, and in further answer refers to the matters set forth in the Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant and all payments thereunder were made upon behalf of its said principal, and with the funds of said principal, all of which

was well known to the plaintiff and said principal is the only party which may properly be sued by plaintiff in connection with said contract.

DEFENSE TO THE SIXTH CAUSE OF ACTION

(Contract 191 S. C.)

Sixty-fourth. In answer to Paragraph Sixty-fourth of the Statement of Claim, defendant admits that on or shortly after the 5th day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into the contract in writing dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth inclusive of defendant's Set-Off and Counterclaim.

Sixty-fifth. In answer to Paragraph Sixty-fifth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on defendant for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Sixty-sixth. In answer to Paragraph Sixty-sixth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff

as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Sixty-seventh. In answer to Paragraph Sixty-seventh of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $621,947.17 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $421,549.93 and no more.

Sixty-eighth. Admitted.

Sixty-ninth. In answer to Paragraph Sixty-ninth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $9,239,707.69 and defendant avers that said cost so revised is $9,039,310.45 and no more, made up as follows:

Estimated cost	$8,514,000.00
Costs resulting from wage increases	421,549.93
Costs resulting from changes in plans and specifications	103,760.52
Total revised estimated cost	9,039,310.45

Seventieth. In answer to Paragraph Seventieth of the Statement of Claim, defendant refers to the averment set forth in Paragraph Sixty-sixth hereof.

Seventy-first. In answer to Paragraph Seventy-first of the Statement of Claim, defendant denies

that the total actual cost of said vessels, after applying all credits referred in said paragraph, was $6,354,163.53, or any other or greater sum than $6,349,258.11.

Seventy-second. In answer to Paragraph Seventy-second of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $6,354,163.53 and that the actual cost when reduced by $3,869.37 was $6,350,294.16. Defendant avers that the actual cost was $6,349,258.11, which when reduced by $3,869.37 is $6,345,388.74 and no more.

Seventy-third. In answer to Paragraph Seventy-third of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $2,889,413.53 or was any other or greater sum than $2,693,921.71, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Seventy-fourth. In answer to Paragraph Seventy-fourth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $378,269.18 or any other sum or sums of money from defendant or its said principal. The defendant alleges that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the

United States at least $1,288,204.13 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$6,405,741.11	
On account of profit to plaintiff	1,866,260.00	
Total		$8,272,001.11

Credits to Plaintiff:

Total actual cost of construction	$6,349,258.11	
Profit to plaintiff, not to exceed 10 per cent of $6,345,388.74	634,538.87	
Total		6,983,796.98
Overpayment to plaintiff		1,288,204.13

Defendant avers that for reasons set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim, the provisions of said contracts providing for profit to plaintiff are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $1,288,204.13.

Seventy-fifth. In answer to Paragraph Seventy-fifth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant but on the contrary avers that the plaintiff has been largely overpaid is connection

with said contract as already set forth and in further answer refers to the matters set forth hereafter in the defendant's Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew, and the said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE SEVENTH CAUSE OF ACTION

(Contract 196 S. C.)

Seventy-sixth. In answer to Paragraph Seventy-sixth of the Statement of Claim, defendant admits that on or shortly after the fifth day of January, 1918 (and alleges that actual date was February 1, 1918), plaintiff and defendant made and entered into a certain contract in writing, dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessel was to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessel was constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter, in Paragraphs Third to Eighth, inclusive, of the defendant's Set-Off and Counterclaim.

Seventy-seventh. In answer to Paragraph Seventy-seventh of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant for the reasons more particularly set forth hereafter in Paragraphs Ninth

to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Seventy-eighth. In answer to Paragraph Seventy-eighth of the Statement of Claim, defendant avers that it took possession of and accepted said vessel upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ship.

Seventy-ninth. In answer to Paragraph Seventy-ninth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $132,318.73 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $317.50 and no more.

Eightieth. Admitted.

Eighty-first. In answer to Paragraph Eighty-first of the Statement of Claim, defendant denies that the revised estimated cost of said vessel revised in accordance with the provisions of said contract is $1,433,258.84 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $1,301,257.61 and no more, made up as follows:

Estimated cost	$1,295,000.00
Costs resulting from wage increases	317.50

Cost resulting from changes in plans and specifications	5,940.11
Total revised estimated cost	1,301,257.61

Eighty-second. In answer to Paragraph Eighty-second of the Statement of Claim, defendant refers to the averments set forth in Paragraph Seventy-eighth hereof, and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Eighty-third. Admitted.

Eighty-fourth. In answer to Paragraph Eighty-fourth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessel was less than the revised estimated cost of said vessel was $309,476.76 or was any other or greater sum than $177,475.53, and defendant avers that for the reasons hereinafter stated the plaintiff was not and is not entitled to receive or retain any part of said sum.

Eighty-fifth. In answer to Paragraph Eighty-fifth of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $37,140.46 or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States, at least $134,719.71 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$1,142,822.60

On account of profit to plaintiff	228,057.40	
Total		$1,370,880.00

Credits to Plaintiff:

Total actual cost of construction	$1,123,782.08	
Profit to plaintiff, not to exceed 10 per cent of $1,123,782.08	112,378.21	
Total		1,236,160.29
Overpayment to plaintiff		134,719.71

Defendant avers that for reasons hereinafter set forth in said Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff, are invalid and unenforceable and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $134,719.71.

Eighty-sixth. In answer to Paragraph Eighty-sixth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant but on the contrary avers that the plaintiff has been largely overpaid in connection with said contract as already set forth and in further answer refers to the matters set forth hereafter in defendant's Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew, and the said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE EIGHTH CAUSE OF ACTION

(Contract 226 S. C.)

Eighty-Seventh. In answer to Paragraph Eighty-seventh of the Statement of Claim, defendant admits that on or about the 18th day of March, 1918 (and alleges that the actual date was May 1, 1918), plaintiff and defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim.

Eighty-eighth. In answer to Paragraph Eighty-eighth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Eighty-ninth. In answer to Paragraph Eighty-ninth of the Statement of Claim, defendant avers that it took possession of said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to

the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Ninetieth. In answer to Paragraph Ninetieth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $1,969,148.85, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $2,080.61, and no more.

Ninety-first. Admitted.

Ninety-second. In answer to Paragraph Ninety-second of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $13,978,550.85, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $12,011,482.61, and no more, made up as follows:

Estimated cost	$11,885,000.00
Costs resulting from wage increases	2,080.61
Costs resulting from changes in plans and specifications	124,402.00
Total revised estimated cost	12,011,482.61

Ninety-third. In answer to Paragraph Ninety-third of the Statement of Claim, defendant refers to the averments set forth in Paragraph Eighty-ninth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Ninety-fourth. Admitted.

Ninety-fifth. In answer to Paragraph Ninety-fifth of the Statement of Claim, defendant admits

the figures therein contained, but the defendant denies that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff.

Ninety-sixth. In answer to Paragraph Ninety-sixth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $3,087,121.80 or was any other or greater sum than $1,120,053.56, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Ninety-seventh. In answer to Paragraph Ninety-seventh of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $578,702.35, as alleged, or any other sum or sums of money from defendant or its principal. The Defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $1,050,715.64 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to plaintiff:

On account of actual cost of construction	$11,149,326.76	
On account of profit to plaintiff	1,895,079.61	
Total		$13,044,406.37

Credit to plaintiff:

Total actual cost of construction	$10,904,547.82	
Profit to plaintiff not to exceed 10 per cent of $10,891,429.05	1,089,142.91	
Total		11,993,690.73
Overpayment to plaintiff		1,050,715.64

Defendant avers that for reasons hereinafter set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $1,050,715.64.

Ninety-eighth. In answer to Paragraph Ninety-eighth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that the plaintiff has been largely overpaid in connection with said contract, as already set forth, and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew, and the said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE NINTH CAUSE OF ACTION.

(Contract 230 S. C.)

Ninety-ninth. In answer to Paragraph Ninety-ninth of the Statement of Claim, defendant admits that on or about the 22d day of April, 1918, plaintiff and defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundredth. In answer to Paragraph One Hundredth of the Statement of Claim, defendant avers that Article XIX of said contracts speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and First. In answer to Paragraph One Hundred and First of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's

keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Second. In answer to Paragraph One Hundred and Second of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $336,221.90, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $238,703.72, and no more.

One Hundred and Third: Admitted.

One Hundred and Fourth. In answer to Paragraph One Hundred and Fourth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $4,503,826.10, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $4,406,307.92, and no more, made up as follows:

Estimated cost	$4,150,000.00
Costs resulting from wage increases	238,703.72
Costs resulting from changes in plans and specifications	17,604.20
Total revised estimated cost	4,406,307.92

One Hundred and Fifth. In answer to Paragraph One Hundred and Fifth of the Statement of Claim, defendant refers to the averment set forth in Paragraph One Hundred and First hereof.

One Hundred and Sixth. In answer to Paragraph One Hundred and Sixth of the Statement of Claim,

defendant denies that the total actual cost of said vessels after applying all credits referred to in said paragraph was $3,219,617.30, or any other or greater sum than $3,218,669.91.

One Hundred and Seventh. In answer to Paragraph One Hundred and Seventh of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $3,219,617.30 and that the actual cost, when reduced by $26,433.82 was $3,193,183.48. Defendant avers that the actual cost was $3,218,669.91, which when reduced by $26,433.82 is $3,192,236.09 and no more.

One Hundred and Eighth. In answer to Paragraph One Hundred and Eighth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,310,642.62 or was any other or greater sum than $1,214,071.83, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Ninth. In answer to Paragraph One Hundred and Ninth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $212,711.13 as alleged, or any other sum or sums of money from defendant or its principal. The defendant alleges that the defendant,

acting in behalf of the United States has overpaid the plaintiff with funds of the United States at least $539,333.96 in excess of the aggregate amount which the plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:		
On account of actual cost of construction	$3,248,727.48	
On account of profit to plaintiff	828,500.00	
Total		$4,077,227.48
Credits to Plaintiff:		
Total actual cost of construction	3,218,669.91	
Profit to plaintiff not to exceed 10 per cent of $3,192,236.09	319,223.61	
Total		3,537,893.52
Overpayment to plaintiff		539,333.96

Defendant avers, for the reasons hereinafter set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $539,333.96.

One Hundred and Tenth. In answer to Paragraph One Hundred and Tenth of the Statement of Claim, defendant denies that any sum whatsoever is due or

owing to plaintiff by defendant and upon the contrary avers that the plaintiff has been largely overpaid in connection with said contract as already set forth and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as was well known to the plaintiff which is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE TENTH CAUSE OF ACTION

(Contract 299 S. C.)

One Hundred and Eleventh. In answer to Paragraph One Hundred and Eleventh of the Statement of Claim, defendant admits that on or about the 30th day of April, 1918 (and alleges that the actual date was May 27, 1918), the plaintiff and the defendant made and entered into a contract in writing, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraph Third to Eighth inclusive of defendant's Set-off and Counterclaim.

One Hundred and Twelfth. In answer to Paragraph One Hundred and Twelfth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on the defendant or its

principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Thirteenth. In answer to Paragraph One Hundred and Thirteenth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Fourteenth. In answer to Paragraph One Hundred and Fourteenth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $635,349.36, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to nothing.

One Hundred and Fifteenth. Admitted.

One Hundred and Sixteenth. In answer to Paragraph One Hundred and Sixteenth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $6,174,768.36, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $5,539,419.00 and no more, made up as follows:

Estimated cost	$5,550,000.00
Costs resulting from wage increases	None
Conceded net deduction from changes in plans and specifications	*10,581.00*
Total revised estimated cost	5,539,419.00

One Hundred and Seventeenth. In answer to Paragraph One Hundred and Seventeenth of the Statement of Claim, defendant refers to the averments set forth in Paragraph One Hundred and Thirteenth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Eighteenth. In answer to Paragraph One Hundred and Eighteenth of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred to in said paragraph was $4,873,957.46, or any other or greater sum than $4,867,111.57.

One Hundred and Nineteenth. In answer to Paragraph One Hundred and Nineteenth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $4,873,957.46, and that the actual cost, when reduced by $18,516.22, was $4,855,441.24. Defendant avers that the actual cost was $4,867,111.57, which, when reduced by $18,516.22, is $4,848,595.35, and no more.

One Hundred and Twentieth. In answer to Paragraph One Hundred and Twentieth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,319,327.12 or was any other or greater sum than $690,823.65, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Twenty-first. In answer to Paragraph One Hundred and Twenty-first of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $212,668.06 as alleged or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States, at least $523,981.85 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$4,897,050.21	
On account of profit to plaintiff	978,902.75	
Total		$5,875,952.96

Credits to Plaintiff:

Cost of construction	4,867,111.57
Profit to plaintiff, not to	

exceed 10 per cent of $4,848,595.35	484,859.54
Total	5,351,971.11
Overpayment to plaintiff	523,981.85

Making a total overpayment to plaintiff of at least $523,981.85 on account of said contract.

Defendant avers that for reasons set forth in Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $523,981.85.

One Hundred and Twenty-second. In answer to Paragraph One Hundred and Twenty-second of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that the plaintiff has been largely overpaid in connection with said contracts as already set forth and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew and said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE ELEVENTH CAUSE OF ACTION

(Contract 300 S. C.)

One Hundred and Twenty-third. In answer to Paragraph One Hundred and Twenty-third of the

Statement of Claim, defendant admits that on or about the 30th day of April, 1918 (and alleges that the actual date was May 27, 1918), the plaintiff and the defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Twenty-fourth. In answer to Paragraph One Hundred and Twenty-fourth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Twenty-fifth. In answer to Paragraph One Hundred and Twenty-fifth of said Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth inclusive of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Twenty-sixth. In answer to Paragraph One Hundred and Twenty-sixth of the Statement of Claim the defendant denies that the increase in the labor cost resulting from wage increases amounted to $899,911.67 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $560.86 and no more,

One Hundred and Twenty-seventh. Admitted.

One Hundred and Twenty-eighth. In answer to Paragraph One Hundred and Twenty-eighth of the Statement of Claim defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $6,940,950.67 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $6,041,599.86 and no more, made up as follows:

Estimated cost	$6,000,000.00
Costs resulting from wage increase	560.86
Costs resulting from changes in plans and specifications	41,039.00
Total revised estimated cost	6,041,599.86

One Hundred and Twenty-ninth. In answer to Paragraph One Hundred and Twenty-ninth of the Statement of Claim defendant refers to the averments set forth in Paragraph One Hundred Twenty-fifth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Thirtieth. Admitted.

One Hundred and Thirty-first. In answer to Paragraph One Hundred and Thirty-first of the Statement of Claim defendant admits the figures therein contained but the defendant denies that the materials referred to therein became and remained the property of the defendant; and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff.

One Hundred and Thirty-second. In answer to Paragraph One Hundred and Thirty-second of the Statement of Claim defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,818,362.80 or was any other or greater sum than $919,011.99, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Thirty-third. In answer to Paragraph One Hundred and Thirty-third of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $260,394.08, as alleged, or any other sum or sums from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $736,528.53 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$5,166,180.02

On account of profit to plaintiff	1,207,660.53	
Total		$6,373,840.55
Credits to Plaintiff:		
Total cost of construction	5,125,053.23	
Profit to plaintiff, not to exceed 10 per cent of $5,122,587.87	512,258.79	
Total		5,637,312.02
Overpayment to plaintiff		736,528.53

Defendant avers that for reasons set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff were invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $736,528.53.

One Hundred and Thirty-fourth. In answer to Paragraph One Hundred and Thirty-fourth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that plaintiff has been largely overpaid in connection with said contract as already set forth and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal as was well known to the plaintiff and said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE TWELFTH CAUSE OF ACTION

(Contract 301 S. C.)

One Hundred and Thirty-fifth. In answer to Paragraph One Hundred and Thirty-fifth of the Statement of Claim, defendant admits that on or about the 30th day of April, 1918, plaintiff and defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter, in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Thirty-sixth. In answer to Paragraph One Hundred and Thirty-sixth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraph Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Thirty-seventh. Admitted.

One Hundred and Thirty-eighth. In answer to Paragraph One Hundred and Thirty-eighth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off

and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Thirty-ninth. In answer to Paragraph One Hundred and Thirty-ninth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $1,531,967.62 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $1,108,914.89 and no more.

One Hundred and Fortieth. Admitted.

One Hundred and Forty-first. In answer to Paragraph One Hundred and Forty-first of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $20,403,499.65 and defendant avers that said cost so revised is $19,980,446.92 and no more, made up as follows:

Estimated cost thereof specified in Article XIX of said contract	$18,825,000.00
Costs resulting from wage increases	1,108,914.89
Costs resulting from changes in plans and specifications	46,532.03
Total revised estimated cost	19,980,446.92

One Hundred and Forty-second. In answer to Paragraph One Hundred and Forty-second of the Statement of Claim, defendant refers to the averment set forth in Paragraph One Hundred and Thirty-eighth hereof.

One Hundred and Forty-third. In answer to Paragraph One Hundred and Forty-third of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $15,346,871.73, or any other or greater sum than $15,344,832.08.

One Hundred and Forty-fourth. Admitted.

One Hundred and Forty-fifth. In answer to Paragraph One Hundred and Forty-fifth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $15,346,871.73 and that the actual cost, when reduced by $70,363.39 was $15,276,508.34. Defendant avers that the actual cost was $15,344,832.08, which when reduced by $70,363.39 is $15,274,468.69, and no more.

One Hundred and Forty-sixth. In answer to Paragraph One Hundred and Forty-sixth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $5,126,991.31, or was any other or greater sum than $4,705,978.23, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Forty-seventh. In answer to Paragraph One Hundred and Forty-seventh of the

Statement of Claim defendant denies that the plaintiff is entitled to the said sum of $922,140.56 as alleged or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States, at least $1,998,447.87 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to plaintiff:

On account of actual cost of said completed vessels	$15,360,150.17	
On account of profit to plaintiff with respect to said completed vessels	3,439,007.57	
On account of cost of said uncompleted vessels	814,685.34	
On account of profit to plaintiff with respect to said uncompleted vessels	26,604.85	
Total		$19,640,447.93

Credits to plaintiff:

Total actual cost of constructing said completed vessels	15,344,832.08	
Profit to plaintiff with respect to said com-		

pleted vessels, not to exceed 10 per cent of $15,274,468.69	1,527,446.87	
Total actual cost of partial construction of said canceled vessels	699,746.46	
Profit to plaintiff with respect to said canceled vessels, not to exceed 10 per cent of $699,746.46	69,974.65	
Total		17,642,000.06
Overpayment to plaintiff		1,998,447.87

Defendant avers that for reasons set forth in said Set-off and Counterclaim the provisions of said contract providing for profit to plaintiff are invalid and unenforceable, and defendant's principal is entitled to recover from Plaintiff the said overpayment of at least $1,998,447.87.

One Hundred and Forty-eighth. In answer to Paragraph One Hundred and Forty-eighth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that plaintiff has been largely overpaid in connection with said contract as already set forth, and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as was well known to the plaintiff, and said

principal is the only party which may properly be sued in connection with said contracts.

DEFENSE TO THE THIRTEENTH CAUSE OF ACTION

(Contract 313 S. C.)

One Hundred and Forty-ninth. In answer to Paragraph One Hundred and Forty-ninth of the Statement of Claim, defendant admits that on or about the 15th day of May, 1918 (and alleges that the actual date was July 19, 1918), plaintiff and defendant made and entered into the contract referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Fiftieth. In answer to Paragraph One Hundred and Fiftieth of the Statement of Claim, defendant avers that the provisions of said contract speak for themselves but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Fifty-first. Admitted except that the defendant denies that the plaintiff duly performed all the terms and conditions of the said

contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Fifty-second. Admitted.

One Hundred and Fifty-third. Admitted.

One Hundred and Fifty-fourth. Admitted.

One Hundred and Fifty-fifth. Admitted.

One Hundred and Fifty-sixth. In answer to Paragraph One Hundred and Fifty-sixth of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $84,044.29, against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-off and Counterclaim, and avers that for reasons referred to therein said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE FOURTEENTH CAUSE OF ACTION

(Contract 314 S. C.)

One Hundred and Fifty-seventh. In answer to Paragraph One Hundred and Fifty-seventh of the Statement of Claim, defendant admits that on or about the 15th day of May, 1918 (and alleges that the actual date was July 19, 1918), plaintiff and defendant entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and

that said vessels were constructed for said principal, al of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Fifty-eighth. In answer to Paragraph One Hundred and Fifty-eighth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Fifty-ninth. Admitted.

One Hundred and Sixtieth. In answer to Paragraph One Hundred and Sixtieth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Sixty-first. In answer to Paragraph One Hundred and Sixty-first of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $2,511,201.61 and avers that the total

increase in the labor cost resulting from wage increases authorized by it amounted to $5,418.52 and no more.

One Hundred and Sixty-second. Admitted.

One Hundred and Sixty-third. In answer to Paragraph One Hundred and Sixty-third of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $14,384,302.11 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $11,878,519.02 and no more, made up as follows:

Estimated cost,	$11,540,000.00
Costs resulting from wage increases	5,418.52
Add net cost of changes in said plans and specifications, as aforesaid	333,100.50
Total revised estimated cost	11,878,519.02

One Hundred and Sixty-fourth. In answer to Paragraph One Hundred and Sixty-fourth of the Statement of Claim, defendant refers to the averments set forth in Paragraph One Hundred and Sixtieth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Sixty-fifth. In answer to Paragraph One Hundred and Sixty-fifth of the Statement of Claim defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $13,073,845.46, or any other or greater sum than $13,070,101.09.

One Hundred and Sixty-sixth. In answer to Paragraph One Hundred and Sixty-sixth of the State-

ment of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $13,073,845.46 and that the actual cost, when reduced by $48,130.79, was $13,025,714.67. Defendant avers that the actual cost was $13,070,101.09, which when reduced by $48,130.79 is $13,021,970.30 and no more.

One Hundred and Sixty-seventh. In answer to Paragraph One Hundred and Sixty-seventh of the Statement of Claim, defendant denies that the sum of $1,358,587.44 or any other amount represents the amount by which the revised base cost of said vessels was less than the actual cost thereof, reduced as aforesaid and the defendant avers that the actual cost was in excess of the estimated cost in the amount of $1,143,451.28.

One Hundred and Sixty-eighth. In answer to Paragraph One Hundred and Sixty-eighth of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $559,659.62 as alleged or any other sum or sums of money from the defendant or its principal. The defendant avers that for all matters done or performed by plaintiff in connection with said contract, there became due plaintiff a net credit not in excess of $24,818.56, made up as follows:

Credits to Plaintiff:

Total actual cost of construction	$13,070,101.09

Profit to plaintiff, not to exceed 10 per cent of $13,021,979.30	1,302,197.03	
Total		$14,372,298.12
Payments to Plaintiff:		
On account of actual cost of construction	$13,172,512.23	
On account of profit to plaintiff	1,174,967.33	
Total		$14,347,479.56
Total Underpayment		24,818.56

Defendant avers that for reasons set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable.

One Hundred and Sixty-ninth. In answer to Paragraph One Hundred and Sixty-ninth of the Statement of Claim, defendant avers that in connection with said contract, plaintiff is entitled to a credit not in excess of $24,818.56 against the balance owing by it to defendant's principal an account of the matters set forth in this Affidavit of Defense and Set-off and Counterclaim, and avers that for reasons referred to therein, said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE FIFTEENTH CAUSE OF ACTION

(Contract 340 S. C.)

One Hundred and Seventieth. In answer to Paragraph One Hundred and Seventieth of the State-

ment of Claim, defendant admits that on or about the 21st day of June, 1918, plaintiff and defendant made and entered into the contract referred to in said paragraph. Defendant denies that said plant or vessels were to be constructed for it and avers that said contract was entered into by it upon behalf of its principal, the United States of America, for which said plant and vessels were to be constructed, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Seventy-first. In answer to Paragraph One Hundred and Seventy-first of the Statement of Claim, defendant avers that said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth and Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Seventy-second. Admitted except that defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Seventy-third. Admitted.

One Hundred and Seventy-fourth. Admitted.

One Hundred and Seventy-fifth. Admitted.

One Hundred and Seventy-sixth. In answer to Paragraph One Hundred and Seventy-sixth of the Statement of Claim, defendant denies that the credit of $10,000.00, conceded by plaintiff with re-

spect to the office building at Bethlehem, Pennsylvania, is the correct amount of the credit to which defendant's principal is entitled with respect to said building. Upon the contrary, defendant avers that against the amount claimed by plaintiff under said contract, said principal is entitled to a credit in the amount of $200,000.00 as a proper allowance for plaintiff's use and occupancy of the building in question for purposes other than under said contract. Defendant admits that upon the completion of the audit referred to by plaintiff, there became due plaintiff from defendant's principal a sum not in excess of $86,173.58.

One Hundred and Seventy-seventh. In answer to Paragraph One Hundred and Seventy-seventh of the Statement of Claim, defendant avers that in connection with said contract plaintiff is entitled to a credit not in excess of $86,173.58 against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-off and Counterclaim, and avers that for reasons therein referred to, said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE SIXTEENTH CAUSE OF ACTION

(Contract 465 S. C.)

One Hundred and Seventy-eighth. In answer to Paragraph One Hundred and Seventy-eighth of the Statement of Claim, defendant admits that under date of the 15th day of July, 1918 (which contract was not effective until its delivery after January 28, 1919), plaintiff and defendant made and entered into

the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which is well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Ninth to Eighth of defendant's Set-off and Counterclaim.

One Hundred and Seventy-ninth. In answer to Paragraph One Hundred and Seventy-ninth of the Statement of Claim, defendant avers that the provisions of said contract referred to by plaintiff speak for themselves, but defendant denies that the same are legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of defendant's Set-off and Counterclaim.

One Hundred and Eightieth. Admitted.

One Hundred and Eighty-first. In answer to Paragraph One Hundred and Eighty-first of the Statement of Claim, defendant denies that the plaintiff without prejudice suspended work on said three vessels following the receipt of said instructions and thereafter without prejudice complied with all instructions of the defendant in that connection. The defendant avers that in giving plaintiff instructions to suspend all work on the three vessels mentioned in said paragraph and later to cancel so much of the contract as related to the construction of said three vessels, it acted in so doing not for itself nor in its own behalf but solely for and in behalf of its principal, the United States of America, as their agent and instrumentality pursuant to the power and

authority so to do vested in this defendant by the President of the United States by his Executive Order to that effect. The defendant further avers that the plaintiff failed and refused to suspend work on said three vessels upon receipt of the instructions so to do and did not comply with said instructions until several weeks thereafter.

One Hundred and Eighty-second. In answer to Paragraph One Hundred and Eighty-second of the Statement of Claim, defendant avers that it took possession of and accepted said three vessels upon behalf of its principal, the United States of America, all of which was well known to the plaintiff, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract related to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Eighty-third. In answer to Paragraph One Hundred and Eighty-third of the Statement of Claim, defendant denies that the increase in the labor cost in connection with said three vessels resulting from wage increase authorized by it amounted to the sum of $1,509,178.86 or any other sum.

One Hundred and Eighty-fourth. In answer to Paragraph One Hundred and Eighty-fourth of the Statement of Claim, defendant denies that the total amounts by which the estimated cost of said three vessels, and the fixed profit in connection therewith was increased by the changes in the plans and specifications relating thereto, were as alleged by plaintiff. Defendant avers that the net amount by which said fixed sum for profit for each of said three

vessels was increased in accordance with said Article by reason of all said changes in said plans and specifications aggregated not more than the sum of $82,000.00. Defendant further avers that the amounts of said increase and the estimated cost and profits for the purpose of determining the half-savings are immaterial for the reasons hereinafter set forth in Paragraph One Hundred and Eighty-sixth of this Affidavit of Defense.

One Hundred and Eighty-fifth. Admitted.

One Hundred and Eighty-sixth. In answer to Paragraph One Hundred and Eighty-sixth of the Statement of Claim, defendant denies that the revised estimated cost of said three vessels was $19,304,971.18. Defendant admits that the revised estimated cost of each of said vessels was in excess of the actual cost thereof by an amount such that the difference between the actual and revised estimated cost was in excess of $400,000.00.

One Hundred and Eighty-seventh. In answer to Paragraph One Hundred and Eighty-seventh of the Statement of Claim, defendant refers to the averments set forth in Paragraph One Hundred and Eighty-second hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Eighty-eighth. In answer to Paragraph One Hundred and Eighty-eighth of the Statement of Claim, defendant denies that the total actual cost of said three vessels, Hull Nos. 2505-2507, after applying all credits referred to in said paragraph, was $15,233,513.74, or any other or greater sum than $15,224,505.52, and the defendant de-

nies that the total actual cost of the work done on said three vessels, Hull Nos. 2508-10, was $3,033,-886.96, or any other or greater sum than $2,888,-648.70.

One hundred and Eighty-ninth. In answer to Paragraph One Hundred and Eighty-ninth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of Amer a, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $15,233,513.74 and that the actual cost, when reduced by $152,598.36, was $15,080,915.38. Defendant avers that the actual cost was $15,224,505.52, which when reduced by $152,598.36 is $15,071,907.16 and no more.

One Hundred and Ninetieth. In answer to Paragraph One Hundred and Ninetieth of the Statement of Claim, defendant refers to the matters set forth in Paragraph One Hundred and Eighty-sixth of this Affidavit of Defense and the defendant denies that the plaintiff is entitled to any part of said sum for the reasons more particularly set out and alleged in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

One Hundred and Ninety-First. In answer to Paragraph One Hundred and Ninety-first of the Statement of Claim, defendant avers that for all matters done or performed by plaintiff in connection with said contract there became due plaintiff a net credit not in excess of $830,908.06 made up as follows:

Credits to Plaintiff:

Actual cost of constructing said vessels, Hull Nos. 2505-7	$15,224,505.52	
Profit to plaintiff on account of said vessels, not to exceed 10 per cent of $15,071,907.16	1,507,190.72	
Actual cost of work on vessels Hull Nos. 2508-10 prior to termination thereof	2,888,648.70	
Profit to plaintiff on account of said vessels, Hull Nos. 2508-10	222,203.52	
Total		$19,842,548.46

Payments to Plaintiff:

On account of actual cost of said completed vessels, Hull Nos. 2505-7	15,240,199.30	
On account of profit to plaintiff on said completed vessels	864,[illegible]90.00	
On account of cost of said uncompleted vessels, Hull Nos. 2508-10	2,669,328.70	
On account of profit		

to plaintiff on said uncompleted vessels	238,112.40	
Total		19,011,640.40
Underpayment of		830,908.06

Defendant avers that for reasons set forth more particularly hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable.

One Hundred and Ninety-second. In answer to Paragraph One Hundred and Ninety-second of the Statement of Claim, defendant avers that in connection with said contract, plaintiff is entitled to a credit not in excess of $830,908.06 against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-Off and Counterclaim, and avers that for reasons therein referred to said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

* * * * * * * *

DEFENSE TO THE NINETEENTH CAUSE OF ACTION

(Contract for Curtis Propelling Equipments, Etc.)

Two Hundred and Sixth. In answer to Paragraph Two Hundred and Sixth of the Statement of Claim, defendant admits that on or about the 30th day of October, 1918, plaintiff and defendant made and entered into the contract referred to in said paragraph. Defendant denies that said equipments

and spares were to be constructed for it and avers that said contract was entered into by it upon behalf of its principal, the United States of America, for which said machinery was to be constructed, all of which was well known to the plaintiff as is more particularly alleged hereafter in paragraphs Third to Eighth of the Set-Off and Counterclaim.

Two Hundred and Seventh. In answer to Paragraph Two Hundred and Seventh of the Statement of Claim, defendant avers that it took possession of and accepted said equipments and spares upon behalf of its said principal.

Two Hundred and Eighth. In answer to Paragraph Two Hundred and Eighth of the Statement of Claim, defendant denies that the sum of $90,019.55 is now due and owing from the defendant to the plaintiff or any other sum, but on the contrary the defendant avers that for reasons set forth in the defendant's Set-Off and Counterclaim, the provisions of said contract providing for payments to be paid the plaintiff are invalid and unenforceable and that the defendant's said principal is entitled to recover from the plaintiff the amount of said payments so paid in the sum of $656,088.00 and avers further that for reasons referred to in this Affidavit of Defense, Set-Off and Counterclaim said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

Defense to the Twentieth Cause of Action

(Restoration of Leased Land at Wilmington)

Two Hundred and Ninth. Admitted.

Two Hundred and Tenth. Admitted.

Two Hundred and Eleventh. In answer to Paragraph Two Hundred and Eleventh of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $2,570.00 against the balance owing by it to defendant upon the causes of action hereinafter set forth in defendant's Set-Off and Counterclaim. Defendant avers that the agreements referred to in plaintiff's Twentieth Cause of Action were made by defendant upon behalf of its principal, the United States of America.

SET-OFF AND COUNTERCLAIM

First. Defendant avers that in case it should be decided that it, as well as or instead of its said principal, the United States of America, is personally obligated in connection with the contracts and matters set forth in the Statement of Claim, then and in such event defendant is entitled to set-off against any credits due plaintiff in connection therewith, all sums owing by plaintiff to defendant's said principal or to defendant arising out of said contracts and matters, as well as from the additional matters hereinafter set forth, and to recover the entire balance owing by plaintiff in connection with all of said contracts and matters.

Second. For the purpose of such set-off and counterclaim, defendant repeats and alleges all the

allegations hereinbefore set forth in its Affidavit of Defense, and makes the following additional averments:

Third. On the sixth day of April, 1917, the United States of America declared war upon the Imperial German Government, and active hostilities continued from that date until the signing of the armistice on the 11th day of November, 1918. A state of war continued until July 2, 1921, the date fixed under the proclamation by the President on November 14, 1921, of the treaty of peace between the United States and Germany and under the joint resolution of Congress of July 2, 1921.

Fourth. Under date of July 11, 1917, the President of the United States, by virtue of the authority in him vested by the Act of June 15, 1917 (40 Stat. at L., p. 182) made an Executive order, which reads as follows:

> Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.
>
> By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said sec-

tion of said act in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof or charters therein, and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board, or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

Woodrow Wilson.

July 11, 1917.

Fifth. Under date of December 3, 1918, the President of the United States, by virtue of the authority in him vested by said Act of June 15, 1917, made a further Executive order, which reads as follows:

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas by Executive order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas since the issuance of said Executive order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, Sixty-fifth Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively.

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or acts heretofore done in pursuance thereof, I do hereby delegate

all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways, and piers, and to constructed vessels or parts thereof, or charters therein; to the operation, management, and disposition of such dry docks, marine railways, piers, and vessels, and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

Woodrow Wilson.

December 3, 1918.

Sixth. Each and every action taken by the defendant as hereinafter alleged was taken solely by virtue of the power and authority conferred upon the President of the United States in and by the

said Act of June 15, 1917, and the Acts of Congress amendatory thereof, and by the President delegated to the defendant. The defendant, under its certificate of incorporation and under the said Shipping Act, 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto.

Seventh. Each and all of the contracts hereinafter referred to which were entered into, or signed by, or in the name of, the defendant were made and entered into by it solely by virtue of the power and authority delegated to it as an agency of the United States by the President of the United States, under and pursuant to said Act of June 15, 1917, and the Acts amendatory thereof.

Eighth. The transactions with the plaintiff Bethlehem Shipbuilding Corporation, Ltd., hereinbefore and hereinafter referred to, involved amounts greatly in excess of $50,000,000 and under the Shipping Act of 1916, Section 13, which was in full force and effect during the period in which the shipbuilding contracts herein referred to and the supplements thereto were made, the defendant was prohibited from entering into any of said contracts as a principal or in its corporate or individual capacity and under then existing law could enter into the same only as an agent of its principal, the United States of America.

Ninth. *The Bethlehem Steel Corporation* was incorporated under the laws of the State of New Jersey on or about December 10, 1904, as a reorganization of the United States Shipbuilding Company, a corporation then engaged in the building of ships. Said Bethlehem Steel Corporation at or about the

time of its incorporation acquired the entire capital stocks (except qualifying shares held by the directors) of the Bethlehem Steel Company, and Union Iron Works, the Harlan & Hollingsworth Corporation, Samuel L. Moore & Sons Corporation, and of other corporations. The Bethlehem Steel Company then owned and later transferred to the Bethlehem Steel Corporation, (which corporation has since continuously owned,) all the capital stock of the Fore River Shipbuilding Corporation and of the Penn-Mary Steel Company. The Bethlehem Steel Corporation assumed control of the corporations above specifically named as of January 1, 1905, and thereafter until the organization of the Bethlehem Shipbuilding Corporation, Ltd., the Bethlehem Steel Corporation operated the business and plants of said corporations above specifically named, and particularly the shipbuilding plants as subsidiaries, and in fact as incorporated departments or divisions of its shipbuilding organization.

Tenth. The said Penn-Mary Steel Company prior to the transactions hereinafter referred to, owned, among other things, a large shipbuilding plant at Sparrow's Point, Maryland, which was, after February, 1916, operated by the Bethlehem Steel Company. Prior to February, 1916, said plant had been operated by Maryland Steel Company, a Maryland Corporation, the entire capital stock of which was owned by Penn-Mary Steel Company, and contracts with other companies, owned and controlled by the Bethlehem Steel Corporation, for the construction of vessels requisitioned as hereinafter set forth had been made by and in the name of said Maryland Steel Company and were in force on August 3, 1917. The said Maryland Steel Company

has since been dissolved, and all its assets taken over and liabilities assumed by Bethlehem Steel Company.

The Fore River Shipbuilding Corporation, prior to said transactions, and thereafter, until the acquisition thereof by Bethlehem Shipbuilding Corporation, Ltd., owned a large and fully equipped shipbuilding plant in the State of Massachusetts, which is now owned and operated by the Bethlehem Shipbuilding Corporation, Ltd. The Union Iron Works Company then owned, and has since continuously owned, the entire capital stock of Union Iron Works and of Union Iron Works Dry Dock Company, both corporations organized under the laws of the State of California. The Union Iron Works Company during the said period operated (until the operation thereof was taken over by the Bethlehem Shipbuilding Corporation, Ltd.), a shipbuilding plant known as the "Union plant" on the Pacific Coast at or near San Francisco in the State of California.

Eleventh. On or about August 3, 1917, the United States of America, acting through the defendant (under the powers delegated to, and conferred upon it by the President of the United States through said Executive order of July 11, 1917, under said act of June 15, 1917), as a war measure, requisitioned all vessels of over 2,500 tons deadweight capacity then under construction in all shipyards throughout the United States, including such vessels then under construction in the plants and yards of the Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company, and of said Harlan & Hollingsworth Corporation, and Samuel L. Moore and Sons Corporation,

and thereafter entered into contracts with said respective corporations for the completion of the vessels so requisitioned, as more fully hereinafter set forth.

Twelfth. Thereupon the Bethlehem Steel Corporation, for the purpose of carrying out said contracts for the completion of the vessels so requisitioned at the aforesaid plants of its said subsidiary and controlled companies, and for other purposes, caused the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., to be organized under the laws of the State of Delaware, on or about October 15th, 1917. On or about October 30, 1917, the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., acquired through corporate merger the properties of said Harlan & Hollingsworth Corporation, including its shipbuilding plant at Wilmington, Delaware, and the properties formerly of Samuel L. Moore & Sons Corporation, including its shipbuilding plant at Elizabethport, New Jersey, except certain contracts then in force between said Samuel L. Moore & Sons Corporation and the United States. The properties of said Samuel L. Moore & Sons Corporation so acquired were transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and thereafter said Moore Shipbuilding Corporation under the laws of Delaware was merged with the Bethlehem Shipbuilding Corporation, Ltd. By such corporate merger the Bethlehem Shipbuilding Corporation, Ltd., assumed all the liabilities of said Harlan and Moore corporations, and particularly their respective contractual obligations for the completion of the ships under construction requisitioned as aforesaid. At or about the same time the plaintiff ac-

quired from said Bethlehem Steel Company and Penn-Mary Steel Company the said shipbuilding plant at Sparrows Point, Maryland, and said plaintiff has since such acquisition continuously operated the same.

Thirteenth. On or about November 1, 1917, and pursuant to a plan for entering into contracts with the United States of America for the construction of steel vessels, the plants of the Fore River Shipbuilding Corporation, and Union Iron Works Company and of said Union Iron Works Dry Dock Company were leased by said respective companies to the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd. From the effective dates of said leases plaintiff has operated such leased plants. On or about the same date, the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., entered into agreements with the Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and Maryland Steel Company, whereby the Bethlehem Shipbuilding Corporation (Ltd.) undertook the performance in the name and in behalf of said corporations, respectively, and of said Maryland Steel Company of all of their outstanding contracts with the United States of America, for the construction of vessels requisitioned by said requisition order of August 3, 1917. Thereupon the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., entered into and continued in the performance of said contracts and of contracts made in substitution or modification thereof during the period herein referred to, with the consent of the defendant.

Fourteenth. On or about December 13, 1917, the plaintiff, the Bethlehem Shipbuilding Corporation,

Ltd., acting through its officers, agents, and other representatives, entered into preliminary negotiations with the defendant (representing the United States of America and acting under authority of said executive order of July 11, 1917) for the construction of other steel vessels required by the United States of America and deemed necessary for the prosecution of the war.

Fifteenth. At the time of the organization of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and the time of the making of the contracts for building ships hereinbefore and hereinafter referred to between the United States of America and the plaintiff, the Bethlehem Steel Corporation, Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and the Bethlehem Shipbuilding Corporation, Ltd., through its predecessors, the Samuel L. Moore & Sons Corporation and the Harlan & Hollingsworth Corporation, were all thoroughly familiar from practical experience which had extended over a period of many years with the cost of building the various standard types of steel vessels which had prior thereto been built by said respective corporations at their respective yards, and each of said shipbuilding corporations then maintained a large, efficient, and well-equipped organization engaged in the building of steel vessels. The greater part, if not all of the steel, fabricated or otherwise, required for such shipbuilding operations had been obtained by said shipbuilding companies from the Bethlehem Steel Corporation.

Sixteenth. The Bethlehem Shipbuilding Corporation, Ltd., at the time of, and after its incorporation, took over a large part of the organization and

personnel of the said shipbuilding companies merged into it, to wit, Harlan & Hollingsworth and Moore Shipbuilding Corporation and of the shipyards of the other shipbuilding corporations above mentioned, control of which it acquired as above mentioned, by lease, or otherwise, and the organization and personnel of the Sparrow's Point plant acquired as aforesaid. Upon its organization, and prior to the entering into of contracts with the United States of America hereinbefore and hereinafter mentioned, the general basis of organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan & Hollingsworth Corporation, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to said Moore Shipbuilding Corporation, was operated and known as the Moore plant. The shipbuilding plant of the Fore River Shipbuilding Corporation at Fore River, Massachusetts, was operated and known as the Fore River Plant. The shipbuilding plant at Sparrow's Point, Maryland, was operated and known as the Sparrow's Point plant, and the works on the Pacific Coast formerly operated by the Union Iron Works Company and by the Union Iron Works Dry Dock Company, were operated and known as the Union plant. By reason of the fact of the aforesaid long experience of the Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and of the said Harlan and Moore corporations so merged, in building such vessels, the plaintiff Bethlehem Shipbuilding Corporation, Ltd., was entirely familiar with, and had special expert knowledge of

the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom. Neither the United States of America, nor its said agent, the defendant, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as hereinafter stated, Charles M. Schwab) had any such knowledge or means of acquiring the same.

Seventeenth. Defendant further avers that at the time of the making of the false representations herein alleged with regard to the estimated cost of the vessels to be constructed under said contracts, the wages of all labor to be employed on such ship construction had been or were about to be fixed at a standard rate applicable to the shipbuilding industry, as was well known to the plaintiff, and the rates of wages so fixed and to be fixed by action of the Government during the war covered specifically every grade and class of workmen to be employed in such ship construction; further, that prior to the negotiations aforesaid and the making of the false representations herein alleged the United States of America as a war measure and by agreement of all the principal steel companies, including the Bethlehem Steel Corporation and Bethlehem Steel Company, had fixed the price of steel and of all steel products for use in shipbuilding throughout the United States; that such prices had been fixed in great detail and that there was a well-known and recognized price for all steel for ship construction and such prices were intended to be and were in fact unchanged throughout the period of ship construction herein alleged; further, that the United States of America through its control of transportation had fixed transportation costs and controlled

all other basic industries entering into the production of ships.

Defendant further avers that the costs of labor and steel constitute by far the largest items of the cost of ship construction and that such costs as well as all other costs entering into the cost of ship construction were well known to the plaintiff and could be readily computed and ascertained by it.

The said plaintiff also knew the approximate amount and number of hours of labor and amount and cost of material and all other elements of costs entering into the construction of such vessels.

Eighteenth. Because of the necessity for constructing the vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the United States of America not only to control the entire shipbuilding, steel, coal, transportation, and other industries of the United States but to enter into contracts with shipbuilders for the construction of as many vessels as it was possible for each shipbuilder to construct, and to have the same constructed in the least possible period of time. These conditions and this emergency were well known to the public in general, and particularly to the plaintiff herein named.

Nineteenth. Under these conditions the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., acting through its duly authorized representatives, during the months of October, November, and December, 1917, represented to the United States of America, through its agency, the defendant, that it was im-

practicable to estimate within a reasonable percentage what would be the actual cost of constructing vessels similar to those theretofore constructed at the various plants then operated by the Bethlehem Shipbuilding Corporation, Ltd., and proposed that said vessels should be constructed for the United States of America on a basis of actual cost plus a fixed fee, with an agreed-upon probable cost the plaintiff to be paid in addition to the fixed fee one-half of any saving that might be made below the estimated cost figure, and with the further provision that the estimated cost figure should be increased due to any increase in rate of wages that might be approved by the defendant. The contracts hereinafter referred to were drawn in accordance with said proposal and similar proposals and the respective amounts stated therein as the estimated actual cost of construction were represented by the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., acting through its said representatives, as fair and reasonable estimates of said costs, based upon the wage scale then in effect and upon existing costs of material, together with a reasonable allowance to cover increases in cost in the ensuing eighteen months, and said corporation refused to undertake said construction if lesser sums were insisted upon by the United States of America.

Twentieth. Defendant avers that said representations were knowingly false in that the Bethlehem Shipbuilding Corporation, Ltd., as hereinbefore set forth, was in a position to know what would be the approximate cost of constructing said vessels, and the said amounts stated in said contracts were known by the said representatives of said corporation to be very greatly in excess of any costs which

could reasonably be anticipated. Defendant avers that said estimates and representations were made for the purpose of enabling the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., to derive excessive, unreasonable and unconscionable profits from said contracts.

Twenty-first. The respective amounts named in said contracts were objected to by the duly authorized representatives of the defendant, acting upon behalf of the United States of America, as being excessive and unreasonable, and said amounts were assented to by said representatives only because of the repeated assurance given by said representatives of the Bethlehem Shipbuilding Corporation, Ltd., that said estimates had been made in good faith, were entirely fair and reasonable, and were the lowest sums for which it would undertake the work in question.

Twenty-second. The fixed fees specified in said contracts were based upon the fictitious estimates stated in the respective contracts as the estimated actual cost of construction, and were in all or in substantially all of said contracts, approximately equal to ten per cent of such estimated cost.

Twenty-third. Defendant avers that at the time of the execution of said contracts the Bethlehem Shipbuilding Corporation, Ltd., was in a position to know and had every reason to expect that the sum named in the respective contracts as a fixed fee would in all probability equal or exceed a fair and reasonable profit for the services to be performed thereunder, and the terms of said contracts relating to the respective amounts of the estimated costs and "half-savings" were insisted upon by said corpora-

tion for the purpose of enabling it to derive excessive, unreasonable and unconscionable profits from said contracts.

Twenty-fourth. The defendant further avers that, under the common law and under the laws of the United States, the duty and obligation were imposed upon the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., so entering into contractual relations with the United States, to perform each and all of said shipbuilding contracts fairly and honestly at the least practicable expense and in the shortest practicable time, and that whatever provisions might be contained in the said contracts to the contrary notwithstanding, the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., was entitled to receive from the United States only a fair and reasonable profit upon the work done, and that any term, covenant, or provision in any such contract for the payment of any sum in excess of a fair and reasonable profit upon the fair and reasonable cost of the work was and is void and unenforceable.

Twenty-fifth. The defendant further avers that during the period in which the hereinafter specified contracts were entered into the United States of America, acting under its constitutional powers during the war, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants operated by the plaintiff above named, at a sum not to exceed 10% of the actual cost, and in many instances at a sum much less than 10% of actual cost; and the defendant further avers that 10% of the actual cost with respect to contracts for building ships of the type and tonnage of the vessels con-

tracted for as hereinafter alleged is the maximum profit which in fairness and reason, and under the settled principles of law, a shipbuilder under the circumstances herein alleged is entitled to receive from the United States of America.

Twenty-sixth. The defendant further avers that on or about the 11th day of April, 1918, and before the effective date of many of the shipbuilding contracts hereinafter specifically referred to, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918. During said period said Charles M. Schwab was vested by the defendant with full power and authority to make new contracts for shipbuilding and to modify all then existing contracts for shipbuilding and to exercise all powers of modifications of then existing contracts vested in the President of the United States by the said act of June 15, 1917, and by the President delegated to the Fleet Corporation. The powers so vested in said Director General included the power to require and compel the shipbuilding contractors to modify any then existing contracts by reducing the profits therein covenanted for to a reasonable profit. In the exercise of such power the said Charles M. Schwab, acting as Director General as aforesaid, established with respect to other contractors a policy, in behalf of the United States, of reducing excessive profits under then existing contracts to not over 10% of the actual and reasonable cost of construction, and with respect to other contractors limited the profits in contracts to be made to not over 10% of such cost, and declared that the United States Government would not per-

mit contractors engaged in building ships to obtain excessive prices or profits.

Twenty-seventh. At the time said Charles M. Schwab was so acting as Director General and took the aforesaid action with respect to other shipbuilding contractors he was one of the largest stockholders of the Bethlehem Steel Corporation and was Chairman of its Board of Directors and held a corresponding position in the formal corporate organization of the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., and by virtue of his position was in control of the affairs of the Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company. During said period Joseph W. Powell was Vice President of the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., and, as such, in charge of said contracts and of the performance thereof. During this same period said Charles M. Schwab, while acting as Director General of the defendant as aforesaid, took no official action with regard to the herein-specified shipbuilding contracts, and refrained from at any time questioning the aforesaid provisions in said construction contracts with respect to the fixed fee for profit and also with respect to the sharing, as aforesaid, of the difference between the fictitious, estimated cost, and the actual cost, and suffered and permitted the said contracts to remain in full force and effect and new contracts of like tenor and effect to be entered into between the United States of America and Bethlehem Shipbuilding Corporation, Ltd., and payments to be made thereunder, to all intents and purposes as if the same constituted valid and binding obligations of the United States.

Twenty-eighth. During the period aforesaid said Charles M. Schwab was placed by the trustees of the defendant in a position of power and authority over all contracts for ship construction, under which he had the right and power to discharge and remove any subordinate official of the defendant who did not carry out his commands, and was in a position of practical domination over the various officials of the defendant charged with the duty of preparing and executing the shipbuilding contracts hereinafter mentioned. At the same time the said Charles M. Schwab, through his office as Chairman of the Board of Directors of the Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., his large holdings of stock in the former and his dominating position in both corporations as well as in the Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, had the power and authority to direct the terms on which the said contracts should be entered into by and in the name of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd.

Twenty-ninth. The defendant further avers that during the said period while said Charles M. Schwab was Director General, the defendant, under the powers delegated to it by said Executive Order of July 11, 1917, and thereafter by the order of December 3, 1918, and under the terms of the Emergency Shipping Fund Provisions of the said Act of June 15, 1917, had the power to modify, suspend, and cancel each and all of the said shipbuilding contracts hereinbefore and hereinafter referred to, and thereby to require the contracting shipbuilder to consent to a reduction of the amounts thereby agreed upon for profits and half savings as aforesaid and to reduce

the profits thereby covenanted to be paid to a fair and reasonable amount.

Thirtieth. Defendant further avers that the contracts for building new ships (as distinguished from ships requisitioned under construction) hereinabove alleged were known and designated by the following numbers, and provided for the construction of ships in number and type as follows:

Contract No.	Number of ships	Type	Dead-weight each	Shipyard	Dated back to—
					1917
177 S. C.	12	Steel Tank	10,100	Union	Dec. 31
178 S. C.	3	do	7,500	Harlan	Do.
	3	Steel cargo	7,400		
179 S. C.	3	do	10,100	Sparrows Point	Do.
182 S. C.	2	Troop ships (steel)		do	Do.
183 S. C.	3	Steel tank	9,100	Fore River	Do.
184 S. C.	6	Tugboats		Moore	Do.
184 S. C. (supplemental)	14	do		do	
191 S. C.	4	Steel cargo	2 of 11,800, 1 of 11,700, 1 of 12,000	Union	Do.
196 S. C.	1	do	7,400	Sparrows Point	Do.
					1918
226 S. C.	4	Steel tank	10,100	do	Mar. 18
	3	Steel cargo	7,400		
230 S. C.	2	do	11,800	Union	Apr. 22

Contract No.	Number of ships	Type	Dead-weight each	Shipyard	Dated back to—
299 S. C.	3	Steel tank	9,100	Fore River	Apr. 30.
300 S. C.	3	do	10,100	Sparrows Point	Do.
301 S. C.	6	do	10,100	do	
	[1]6	Steel cargo	11,800	Union	Do.
312 S. C.	[2]3	do	7,400	Sparrows Point	May 15.
313 S. C.	[2]10	Tugboats		Moore	Do.
314 S. C.	3	Steel tank	7,500	Harlan	Do.
	7	Steel cargo	5,100		
340 S. C.	[2]20	Troopships		Union	June 21.
465 S. C.	[1]6	do		Sparrows Point	July 15.

[1]3 ships canceled.
[2]All canceled.

All of the above contracts with the exception of Numbers 184 S. C., 184 S. C. supplemental, and 312 S. C. are printed as Exhibits as part of the plaintiff's Statement of Claim in Assumpsit. Contracts 184 S. C., 184 S. C. supplemental, and 312 S. C. are printed in the Answer of the Bethlehem Shipbuilding Corporation, Ltd. (the plaintiff in this Action) filed in the suit in equity brought against the Bethlehem Shipbuilding Corporation, Ltd. and others by the United States of America in the United States District Court for the Eastern District of Pennsylvania, said suit being numbered "In Equity No. 3315." The said contracts 184 S. C. and 184 S. C. supplemental are numbered Exhibit 10, and said contract 312 S. C. is numbered Exhibit 18 in said Answer. The defendant, in order to simplify the record and prevent duplication, begs leave to refer with the same force and effect to said exhibits as

though the same were printed as a part of this Affidavit of Defense and Set-Off and Counterclaim.

The nominal date of each of said contracts does not represent the effective date thereof, which in every case was later than the nominal date.

Thirty-first. The terms and provisions of said contracts above specified which related to the basis for ascertaining the cost were substantially the same and the actual cost was thus defined by Article XVII of said contracts as follows:

XVII.

For the purposes of this contract actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts

or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed it shall be determined by arbitration in the manner provided for in Article XX.

Thirty-second. The terms and provisions of said contracts by which the price to be paid for each of the vessels to be constructed thereunder are substantially similar. The terms of said contracts relating to price and fixed fee for profit and to the "Half Savings Clause" are contained in Article XIX.

In each of the contracts for ships to be built at yards on the East Coast, Article XIX, reads sub-

stantially (necessary changes being made) as does Article XIX of Contract 178 S. C., to wit:

XIX.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of one million six hundred and twelve thousand dollars ($1,612,000) for each of said tank vessels, and of one million three hundred and fifty thousand dollars ($1,350,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of one million six hundred and

twelve thousand dollars ($1,612,000), or of any cargo vessel in the execution of the work reach or exceed the sum of one million three hundred and fifty thousand dollars ($1,350,000), or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of one hundred and sixty thousand dollars ($160,000) for such tank vessel, and one hundred and twenty-five thousand dollars ($125,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums

for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered, and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, determined as hereinbefore provided shall become immediately due and payable.

Article XIX in each of the contracts for ships to be built at yards on the West Coast is substantially identical except that the phrase "In force January 3, 1918, at said shipyard of the contractor", or an equivalent phrase, is used in place of the phrase used in the East Coast contracts, "In force January 3, 1918, at the Navy Yard of the United States", (Boston, Brooklyn, Norfolk, Philadelphia, as the case may be).

Thirty-third. Defendant further avers that contract No. 465 S. C., in the covenants therein contained relating to profits and savings, differed from the others in that it provided that the amount of the "one-half of the savings" to be paid to the shipbuilder should not exceed $200,000.00 per vessel.

Contract No. 182 S. C. differed from the others by providing that the shipbuilder should be paid the actual cost of construction plus a fixed profit of 10% of said cost, without any half-savings clause.

Complainant avers that with respect to said two contracts the Bethlehem Shipbuilding Corporation, Ltd., is entitled only to a fair and reasonable profit upon the reasonable and proper cost and that the provision for "half savings" in contract No. 465 S. C., is unconscionable, void, and unenforceable in like manner as with respect to the other contracts above specified.

Thirty-fourth. Defendant further avers that with respect to contracts numbers 178 S. C., 179 S. C., 183 S. C., 184 S. C., 184 S. C. Supplemental, 196 S. C., 226 S. C., 299 S. C., 300 S. C., 312 S. C., 313 S. C., 314 S. C., 465 S. C., the estimated actual cost under Article XIX is incapable of computation in that it is stated to be—

> "at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States, * * *" (Boston, Brooklyn, Norfolk, Philadelphia, as the case may be)—

as will more fully appear by reference to the copies of each of said contracts hereinbefore referred to as exhibits. At the time of the making and delivery of said contracts and thereafter there was in fact no wage schedule adopted by the Federal Adjustment Wage Board in force at any one of the Navy Yards specified in the respective contracts. By reason thereof defendant avers that the "half-savings clause" in each of said contracts is void for uncertainty as well as for the reasons hereinabove specifically alleged.

Thirty-fifth. Defendant further avers that in the course of the construction of said vessels the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., from

time to time requested payment of amounts of money claimed to be due on account of the said half-savings clause in the contracts referred to, and that thereupon from time to time payments were made under mistake of law, without warrant of law, and under erroneous construction of the respective contracts, by the disbursing officers of the defendant of moneys of the United States of America, and such payments were applied by plaintiff on account of moneys claimed by it to be due and payable under said half-savings clauses of said contracts.

Thirty-sixth. Annexed hereto as a part of this pleading is a schedule marked "Exhibit A", showing in detail in column 15 thereof with respect to each of the contracts therein specified, the actual amounts paid to Bethlehem Shipbuilding Corporation, Ltd., as aforesaid on account of "Half savings", amounting in the aggregate to $9,014,633.05.

Thirty-seventh. Exhibit A also shows in detail with respect to each of the contracts therein specified the following particulars in addition to the "half-savings" heretofore mentioned:

Column
1—No. of Cause of Action.
2—Contract Number.
3—Shipyard Plant.
4—Net Construction Cost.
5—Surplus Materials.
6—Total Cost.
7—Payments to Shipbuilder on Cost.
8—Recoverable Overpayment on Cost.
9—Net Cost—Basis of Profit.
10—Percentage of Cost Conceded for Profit.

Column

11—Credits to Shipbuilder as Profit.
12—Payments to Shipbuilder for Profit.
13—Recoverable Overpayments on Profit.
16—Grand Total Credits to Shipbuilder.
17—Grand Total Payments to Shipbuilder.
18—Grand Total Recoverable Overpayments.

After deducting the overpayments on "Half Savings" heretofore mentioned, the said Exhibit shows an overpayment by the Defendant to the Plaintiff of an amount aggregating $401,053.89.

Defendant does not concede that plaintiff Bethlehem Shipbuilding Corporation, Ltd., is entitled to as much as 10% upon actual cost as a fair and reasonable profit, but, as more fully elsewhere herein set forth, contends that such profit should be fixed by the court after hearing the evidence. The computation in said schedule is made up on the basis stated only for convenience of illustration.

Thirty-eighth. Defendant further avers that in addition to the sums hereinabove alleged there was advanced by the defendant as agent as aforesaid, the sum of $4,832,212.51, or thereabouts, moneys of the United States of America, and said amount was received by the said plaintiff Bethlehem Shipbuilding Corporation, Ltd., to its use, and the greater part thereof expended in and about the permanent betterment and improvement of the plants owned or operated by it and herein referred to as the Alameda, Sparrows Point, and Harlan plants, respectively, and upon an office building at South Bethlehem, Pennsylvania. The detail of the moneys so advanced and expended upon the said shipbuilding plants and office building is stated in a schedule

hereto annexed, made a part hereof and marked "Exhibit C." The said moneys were all (except the moneys advanced for said office building) advanced under provisions in the contracts which are substantially identical with Article XXVIII of Contract 177 S. C. which reads as follows:

XXVIII

In order to provide the Contractor with two additional slipways, with the necessary cranes and other appliances, additional wharves, buildings, including shop and office buildings, compressor plant, tools, and other equipment (hereinafter referred to as the special improvements, tools, and equipment), all of which are necessary to construct the vessels under this contract, the Owner agrees to deposit with a depositary or depositaries, designated by the Contractor and approved by the Owner, from time to time as requested by the Contractor, up to the sum of One Million Dollars ($1,000,000). The amounts so deposited shall be used to pay the cost of the special improvements, tools, and equipment, including cost of labor, cost of superintendence, and other charges in connection therewith. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. The title to such deposit and interest thereon shall

be and remain in the Owner until withdrawn as aforesaid, and upon final completion of this contract or upon default of the Contractor hereunder the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article. The special improvements, tools, and equipment shall continue to be the property of the Owner until they shall have been purchased by the Contractor or abandoned by the Owner as hereinafter provided.

Upon the completion of the said twelve (12) vessels the value of the special improvements, tools, and equipment shall be agreed upon between the parties hereto. In case the parties hereto shall be unable to agree as to the value thereof, it shall be determined in accordance with the provisions of Article XX hereof. The value of the special improvements, tools, and equipment shall be agreed or determined and listed separately. In determining said value there shall be taken into account the original cost as shown by the vouchers delivered as aforesaid, the cost in a normal material and labor market, all circumstances, such as the use made of the special improvements, tools, and equipment during the life of this contract, the conditions of the shipbuilding business generally, the amount of depreciation therein due to wear and tear, and the replacement value at market prices at that time. Such value having been agreed upon or determined as aforesaid, the Contractor within thirty (30) days thereafter shall elect whether it shall purchase and

pay for the special improvements, tools, and equipment, or any part thereof as may be agreed upon, and shall give the Owner notice thereof in writing. In case it shall elect to purchase said property or any part thereof, it shall pay the value thereof as agreed or determined as aforesaid within thirty (30) days thereafter; and upon payment therefor in full the Owner agrees to execute and deliver to the Contractor one or more bills of sale, deeds, or other instruments as shall be necessary in order to convey to the Contractor the Owner's interest in the property so purchased and to discharge or cancel of record any instrument that the Owner shall have theretofore recorded. If the Contractor shall elect not to purchase the special improvements, tools, and equipment, or any part thereof, then the Owner shall have the right to enter upon Contractor's works and remove the same. Any damage done in the removal of said property shall be made good by the Owner. If within one hundred and twenty (120) days from date of notice given to it by the Contractor that it has elected not to purchase any of said property, the Owner shall not have begun the removal thereof, then the Owner shall be deemed to have abandoned said property and thereupon it shall become the property of the Contractor. If the Owner shall begin removal, the work of removal shall be continued with the utmost vigor and dispatch until completed. If the Owner shall not so prosecute such work of removal, then the Contractor may complete such removal at the risk and expense of the Owner.

In so far as possible the Contractor agrees to mark the special improvements, tools, and equipment with signs indicating that such property is that of the United States of America represented by the United States Shipping Board Emergency Fleet Corporation. The Contractor further agrees if requested by the Owner, to execute and deliver to the Owner for recordation by it such deeds or other instruments as shall vest and continue in the Owner the title in or to such property, provided it shall be legally possible under the laws of the State of California.'

Thirty-ninth. Defendant further avers that the terms and provisions of said contracts above referred to are improvident, unreasonable, and unconscionable in the following respects: The moneys so advanced were in fact expended by the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., for the greater part in making permanent and beneficial improvements in and about the said plants. Such improvements included the dredging of channels, the erection of piers and shipways of concrete, and other permanent structures, none of which had or has any salvage value and none of which is capable of removal, so that the terms and provisions contained in the said contracts whereby, under certain circumstances, the defendant was given the right to remove the same are unconscionable and of no benefit whatever to the defendant. On the other hand, defendant avers that the said improvements have been and are of great value to the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and that the same have been, since the completion of the vessels under the contracts herein alleged, and now are, in

constant use by the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., in its private shipbuilding work. With respect to all such expenditures the amounts of moneys of the United States so advanced constituted a gift to the said plaintiff of the amount so expended, paid without warrant of law, under a mistake of law.

Fortieth. Defendant further avers that the terms and provisions relating to such advances, whereby the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., is given the option of paying the agreed value of the special improvements, tools, and equipment does not impose upon the plaintiff any obligation to pay the United States of America or the defendant, therefor, and that the right which the said contracts purport to give to the United States of America, or its agent the defendant, to enter upon the works and remove the same, is of no benefit or advantage to the United States of America, because the improvements which were made with the said moneys are in their nature, as above stated, either incapable of removal or incapable of removal without destruction of value, all practical value, and the cost of removing the same would greatly exceed any value which the same might have.

Forty-first. Defendant further avers that there has been no appraisal made of the value of such tools and improvements; that the parties have never been able to agree upon any basis for the adjustment of the claim of the United States of America with respect to the amount so advanced; that the amount which the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., should be required to pay to the United States of America or to de-

fendant therefor is the fair and reasonable value of said improvements, tools, and equipment, which defendant avers to be not less than $4,574,163.93, after giving the plaintiff credit for $258,048.58 for profit on account of construction of the Liberty Plant.

Forty-second. After the issuance and service upon the Bethlehem Steel Company, Fore River Shipbuilding Company, Union Iron Works Company, and upon Harlan & Hollingsworth Corporation, and Samuel L. Moore & Sons Corporation of the requisition orders of August 3, 1917 (hereinbefore referred to in the plaintiff's Statement of Claim), and on or about August 22, 1917; the United States of America, under the authority of the said Act of June 15, 1917, through its agency, the defendant, ordered the said respective shipbuilding corporations to complete the ships under construction at their respective yards so requisitioned, upon substantially the same plans and specifications as were provided in the construction contracts between said respective shipbuilding corporations and the purchasers or former owners of the respective ships under construction. These orders were accepted by the respective shipbuilding corporations and subsequently accepted and adopted by the plaintiff Bethlehem Shipbuilding Corporation, Ltd., and the construction of said requisitioned ships was thereupon proceeded with and the ships completed and delivered.

Attached hereto and made a part hereof is a table marked Exhibit F, showing in detail the Hull Numbers, Original Builders, Original Purchasers, Date of Contract, Type of Contract, Type of Vessel, Dead-

weight Tonnage, Date of Builder's Acceptance of Terms of Compensation for Requisition, and Date of any Alteration in any of those Terms, for the vessels which were affected by the said requisition order. The table also indicates the suit or action in which the original contracts referred to therein have already been printed, together with their Exhibit Numbers in said Suit or Action. In order to simplify the record and prevent duplication, the defendant begs leave to refer to said Exhibits by their respective Exhibit Numbers with the same force and effect as though the same were printed in this Affidavit of Defense, Set-off and Counterclaim. Attached hereto and made a part hereof are copies of the requisition order of August 3, 1917, and letter from the defendant to the builders of August 22, 1917, and marked Exhibits G and H respectively. The said order and letter were identical to each builder except for the address. There is also attached hereto and made a part hereof, the replies of the Fore River Shipbuilding Corporation, the Samuel L. Moore & Sons Corporation, Harlan & Hollingsworth Corporation, Bethlehem Steel Company and Union Iron Works to the letter of August 22, 1917, and marked Exhibits I, J, K, L, and M, respectively.

Forty-third. During the construction of the requisitioned ships above mentioned, the defendant, acting for its said principal, the United States of America, made payments, out of the funds of its principal, to the plaintiff, for the cost of construction, for overtime coefficient hereinafter referred to, for wage increases, for overtime bonuses and for profit. There is attached hereto and made a part hereof a schedule marked "Exhibit B" giving in

detail the above payments so described, together with the total credits earned by and total payments made to plaintiff and indicating where the said payments resulted in either an overpayment or an underpayment to the plaintiff.

"Exhibit B" shows that the defendant, in making the payments above described, overpaid the plaintiff, exclusive of overtime coefficient hereinafter referred to, the sum of $373,767.94 made up as follows:

Overpayments on Profit (Column 11)		$396,718.77
Overpayments on Construction (Column 8)		36,607.15
		433,325.92
Underpayments, Wage Increase (Column 9)	$30,450.07	
Underpayments, Overtime Bonus (Column 10)	29,107.91	
		59,557.98
Net Overpayments		373,767.94

The said overpayments were made under mistake of law, without warrant of law and under erroneous construction of the contracts by the disbursing officers of the defendant, with funds of the United States, and were void, unconscionable, and unenforceable for the reasons more specifically set out in Paragraphs Eight to Thirty-seven, inclusive, of this Set-off and Counterclaim.

Forty-fourth. Defendant further avers that prior to the war and prior to the said requisition order of August 3, 1917; the customary hours of labor at the said respective shipyards at which the ships under

construction were so requisitioned had been from nine and one-half to ten hours per day. The contracts under which the said ships were being constructed for private purchasers, or former owners (except three), were on the lump-sum basis and not on the basis of cost plus a percentage for profit, nor were the respective shipbuilding corporations entitled, under such contracts, to additional compensation for overtime work on such construction. In many instances, however, the said shipbuilding corporations, with the purpose and intent and with the result of increasing their profits under contracts with private purchasers, had employed the men overtime and had paid the customary overtime bonus and thereby had advanced the date of completion and delivery of ships so under construction.

Forty-fifth. Defendant further avers that during the war, the United States of America, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government, eight hours per day should constitute the normal time of employment of labor, and that for all labor employed over eight hours in any day, a bonus of 50% per hour should be paid on the East Coast and a bonus at times of 50% and at other times of 100% should be paid on the West Coast, and that all work on Saturday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of 100% per hour should be paid. The basis of compensation for such overtime is commonly known as "time and a half" and "double time," according as the bonus is 50 or 100%. The United States of America had also, through the Shipbuilding Labor Adjustment Board, fixed and adopted a scale of wages for all labor em-

ployed in and about all Government shipbuilding contracts.

Forty-sixth. Defendant further avers that during the period of construction and completion of said requisitioned ships the Bethlehem Shipbuilding Corporation, Ltd., employed the men overtime, but such overtime in excess of eight hours per day did not (except in occasional and rare instances) exceed the normal and customary period of from nine and one-half to ten hours in force prior to the directions referred to in Paragraph Forty-fifth hereof.

Forty-seventh. Defendant further avers that with respect to such overtime, the Bethlehem Shipbuilding Corporation, Ltd., included as part of the additional cost of labor in the statements rendered to the defendant, an amount herein designated for convenience of reference as the "overtime coefficient." Such overtime coefficient was based upon the unwarranted assumption that by employing labor overtime to the extent and in the manner herein set forth, the overhead of the shipbuilder was increased and the efficiency of the labor decreased. By means of a formula adopted by the plaintiff, three separate coefficients were applied to overtime, such coefficients applying respectively to weekday overtime, for which the workman received time and a half, to weekday overtime for which the workman received double time, and for Sunday and holiday overtime, for which the workman received double time. For purposes of illustration the coefficient known as "2.625," applying to weekday overtime for which the workman received time and a half, is set forth herein to show the effect of such coefficient applied to two hours overtime, this effect being to se-

cure to the plaintiff a return of $2.625 for every dollar paid to the workman as overtime bonus. These figures were arrived at on the following basis —the computation for convenience being reduced to units of a dollar:

Shipbuilder pays workmen for overtime of two hours:	
(a) Included in his lump-sum price at rate of $1.00 per hour	$2.00
(b) Charged to defendant as overtime bonus for two hours at 50% of normal rate	1.00
Total paid by shipbuilder to workmen for overtime and bonus	3.00
Shipbuilder receives, under labor coefficient 2.625, the following:	
(1) Overtime bonus, as above	$1.00
(2) Alleged loss in workmen's efficiency 37.5% of normal rate of $1.00 an hour for two hours	0.75
Total of factors (1) and (2)	1.75
(3) For alleged increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	0.875
Total charged by shipbuilder to defendant for each two hours' overtime	$2.625
Total cost paid by shipbuilder as above, for two hours' work	$3.00

Total charged by shipbuilder to defendant for same 2.625

Net cost to shipbuilder for two hours' work $0.375

On week days for which time and a half was paid the plaintiff charged for and received $2.625 for every dollar of overtime bonus paid to the workmen. With respect to labor performed on Sundays and holidays the overtime coefficient upon the amount paid as bonus for overtime, namely, 100% of the normal rate, was 1.25; and all bonus paid for labor on Sundays and holidays was in the statements of account rendered by the Bethlehem Shipbuilding Corporation, Ltd., charged with respect to the overtime coefficient at 1.25 times the amount paid as bonus.

Forty-eighth. Defendant further avers that, in truth and in fact, the Bethlehem Shipbuilding Corporation, Ltd., did not incur any substantial increase in overhead by reason of the overtime work aforesaid. The efficiency of the labor was not thereby decreased and the hours during which the individual laborers were employed were not increased beyond the hours which had been customary in the shipbuilding industry prior to the war. The efficiency of the individual laborers during the period of their overtime employment was no less than the efficiency during the eight hours of their regular employment nor was their efficiency during the eight hours of their regular employment decreased by the fact of their working overtime.

Forty-ninth. Defendant further avers that from time to time the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., included in its statements ren-

dered for compensation for overtime work and expense of labor incurred in and about the completion of said requisitioned ships, items representing labor coefficient computed on the basis hereinabove set forth, and such items were paid by the disbursing officers, under mistakes of law, without warrant of law, and without any authority granted by the United States of America. The total amount of moneys so paid by the defendant upon behalf of the United States of America to the plaintiff on account of labor coefficient is $934,140.11, and is shown, with respect to the several plants herein named in Column 7 of "Exhibit B."

Fiftieth. Defendant further avers that there was no provision in any of the said contracts, either those for the completion of ships requisitioned, or for the building of new ships, whereby the United States of America was required to advance any moneys to the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., as distinguished from reimbursing said plaintiff for construction payments actually made under the terms of said contracts. Nevertheless, on or about the 19th day of April, 1918, at the request of the said plaintiff, the disbursing officers of the defendant, without warrant of law advanced to said plaintiff the sum of Three Million Dollars, and on or about June 12, 1918, the further sum of Five Million Dollars, all out of Government funds. Defendant further avers that both of the said advances, amounting to Eight Million Dollars, were made during the period while Charles M. Schwab was Director General of the Fleet Corporation and exercising control and domination, and standing in the dual relation hereinbefore set forth and that he suffered and permitted said unlawful advances to be made without

in any way attempting to protect the interests of the United States to him entrusted. The said funds amounting to Eight Million Dollars were deposited by said plaintiff in a general account, mingled with other funds and used as working capital, not only in connection with the shipbuilding contracts herein referred to but in connection with its private and general business. It appears from statements furnished by the said plaintiff that the bank in which said fund of Eight Million Dollars was deposited allowed interest thereon and that such bank interest is now held by said plaintiff.

Said sum of Eight Million Dollars so loaned was not repaid in money, but, as each requisitioned ship and certain of the contract ships were completed, a sum of money was credited to the plaintiff on the books of the Fleet Corporation until the total amount of credits equaled the sum of Eight Million Dollars. The defendant avers that the United States of America, or the defendant in its behalf, is entitled to recover the bank interest so allowed, and, in addition, the difference between the same and legal interest at six per cent on the said sum of Eight Million Dollars from the date of the advance and loan thereof to the date of the entry of the said credits. There is attached hereto and made a part hereof, marked "Exhibit E," a tabulation showing the interest computed as above set out and amounting in the aggregate to $498,690.45.

Fifty-first. Defendant further avers that at the time of the negotiations entering into the contract of September 30, 1919, for the construction of Curtis Marine Propelling Equipment, the subject of the plaintiff's Nineteenth Cause of Action, the plaintiff

for the reasons more specifically set out in Paragraphs Ninth to Thirty-seventh of this Set-off and Counterclaim was in a position to estimate approximately, and did so estimate, the cost of construction of said equipment.

Fifty-second. The plaintiff falsely represented to the defendant acting in behalf of its principal, the United States of America, that the sum of $1,661,670 was the fair and reasonable cost of construction of said equipment, together with a fair and reasonable profit for said cost, although at the time it made said representations the plaintiff knew that said sum of $1,661,670 greatly exceeded the cost of construction and would result in grossly excessive, unreasonable, unconscionable, and extortionate profits to the plaintiff.

Fifty-third. The defendant or behalf of its principal relied upon the said representations of said plaintiff and entered into said contract and agreed to pay the plaintiff and did in fact pay the plaintiff the said sum of $1,661,670 for the said equipment, together with other sums for spare parts, aggregating the total sum of $1,702,320.

Fifty-fourth. The said sum of $1,702,320 so paid to the plaintiff yielded to it extortionate, unreasonable and unconscionable profits which amounted to approximately 78 per cent of the cost of construction and no officer of the defendant nor the defendant itself acting for its principal, the United States of America, did or could have had any authority to bind or commit the said principal to any such unreasonable or unconscionable payments, and said payments were wrongfully and unlawfully made to the plaintiff by the defendant in so far as they were

above and beyond a fair and reasonable profit to the plaintiff and constituted overpayments to the plaintiff in the aggregate amount of $656,088.00 and the defendant is entitled to recover for its said principal said sum.

Fifty-fifth. The defendant further avers under the terms of the contracts more specifically enumerated herein in paragraph Thirtieth, the defendant on behalf of the United States and with their funds paid to the plaintiff large sums of money amounting in the aggregate to more than $250,000,000.00 for the construction by the plaintiff of vessels for the United States and for other purposes more particularly stated in said contracts and agreements. In accordance with the terms of said contracts, the plaintiff was required to establish and keep suitable and accurate accounts and records so as to show therein the actual cost of all work done or performed by the plaintiff and the defendant was required at the completion of the work under the practice and laws and regulations of the United States to audit said accounts.

Fifty-sixth. The defendant acting for and on behalf of its principal, the United States, did attempt to audit the accounts of the plaintiff and found that the plaintiff in violation of the terms of said contracts and of its duty and obligation to the defendant and its said principal had failed and neglected to establish or keep suitable accounts or records but, on the contrary, wrongfully and knowingly established and kept unsuitable, misleading and erroneous accounts and records and adopted and applied misleading and erroneous methods and principles for keeping the said cost accounts with the result

that the defendant was forced to reaudit the plaintiff's books and accounts at great expense to the defendant and its principal. As a result of said reaudit, errors and mistakes amounting to millions of dollars were discovered, said mistakes calling for the payment of said millions of dollars by the defendant for its principal to the plaintiff which mistakes were admitted by the plaintiff.

Fifty-seventh. By reason of the plaintiff's failure to keep and maintain said books and accounts in accordance with the terms of the contracts and the custom well known to the plaintiff, the defendant for its said principal was compelled to and did expend the sum of $827,331.13 more than and beyond what it would have been required to expend in the making of said audit had the said accounts of plaintiff been accurately and truthfully kept. The said audit was completed on or about September 1, 1922. The aforesaid amount so expended is now due and owing from the plaintiff to the defendant for its said principal.

Fifty-eighth. Defendant further avers that in the course of constructing ships under the contracts specified in Paragraphs Thirtieth and Forty-second of this Set-off and Counterclaim, the plaintiff has represented to be due and has collected and received from the United States of America and the Disbursing Officers of the Defendant have paid from the funds of the United States of America to said plaintiff without warrant of law, under mistake of law and under erroneous construction of said contracts other amounts in excess of the amounts due and payable under said contracts, the aggregate of the payments so made being $119,432.71. Attached

hereto and made a part of this pleading is Schedule marked Exhibit D showing in detail the items making up the said aggregate amount and, also, showing the amounts overpaid and due from the plaintiff to the defendant's principal as alleged in Paragraphs Fiftieth to Fifty-seventh of this Set-off and Counterclaim.

Fifty-ninth. Defendant further avers that the aggregate amounts of moneys of the United States unlawfully received by the plaintiff, paid without warrant of law, under mistakes of law and otherwise as herein alleged after the allowance of all proper credits is $17,408,024.23. As a result of said payments, there became due from the plaintiff to the defendant's principal, the United States of America, or to defendant, the said sum of $17,408,024.23 and no part of said sum has been paid by the said plaintiff although duly demanded and said sum is now due and owing from the plaintiff, with interest thereon from the 1st day of September, 1922; together with the costs and disbursements of this suit.

Sixtieth. The defendant, without waiving any of its defenses hereinbefore set forth, or any of the averments of the interest and rights of the said United States of America contained therein, but insisting upon them and each of them, avers that in the event the court should determine that the defendant instead of the said United States of America is solely interested in the contracts, transactions, and other matters set forth in the Statement of Claim and this Set-off and Counterclaim, then, and in such event, defendant should recover on its own behalf of the plaintiff the sum of $17,408,024.23, the

sum hereinbefore alleged to be owing by the plaintiff to the defendant's said principal, the United States of America, with interest thereon from the 1st day of September, 1922, together with the costs and disbursements of this suit.

Signed, J. HARRY PHILBIN,
Vice President United States Shipping Board.

Sworn to and subscribed before me this day of , 1927.

Notary Public.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel United States Shipping Board Emergency Fleet Corporation.
RALPH H. HALLETT,
Assistant Counsel United States Shipping Board Emergency Fleet Corporation.

Of Counsel.

EXHIBIT A

STATEMENT SHOWING CREDITS TO SHIPBUILDER, PAYMENTS TO SHIPBUILDER, AND RECOVERABLE OVERPAYMENTS TO SHIPBUILDER ON ACCOUNT OF CONSTRUCTION COST, PROFIT, AND HALF SAVINGS ON ALL DIRECT CONTRACT SHIPS, BOTH COMPLETED AND CANCELED

Cause of Action	Contract No.	Shipyard Plant	CREDITS AND PAYMENTS FOR COST — Credits for Construction Cost: Net Cost	Surplus Materials	Total Cost	Payments to Shipbuilder Account of Cost	Recoverable Overpayments to Shipbuilder Account	CREDITS AND PAYMENTS FOR PROFIT: Net Cost—Basis of Profit	Percentage of Cost Conceded as Profit	Credits to Shipbuilder for Profit	Payments to Shipbuilder Account of Profit	Recoverable Overpayments to Shipbuilder on Profit	"HALF SAVINGS": Credit to Shipbuilder	Recoverable Payments to Shipbuilder on "Half Savings"	SUMMARY TOTALS: Grand Total Credits to Shipbuilder	Grand Total Payments to Shipbuilder	Grand Total Recoverable Overpayments to Shipbuilder
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
1st	177	Union	$22,412,491.57	$53,859.63	$22,466,351.20	$22,792,980.96	[illegible]	$22,412,491.57	10%	$2,241,249.16	$2,268,000.00	$26,750.84	.00	$1,980,242.43	$24,707,600.36	$27,041,283.39	$2,333,683.03
2nd	178	Harlan	9,757,562.79	34,452.84	9,792,015.63	9,803,700.22	[illegible]	9,757,562.79	10%	975,756.28	769,500.00	*206,256.28*	.00	613,610.02	10,767,771.91	10,686,810.24	*80,961.67*
3rd	179	Sparrows Pt	5,552,545.07	3,785.34	5,556,330.41	5,657,186.58	[illegible]	5,532,545.07	10%	555,254.51	539,698.90	*15,555.61*	.00	515,223.37	6,111,584.92	6,712,408.85	*600,823.93*
4th	182	Sparrows Pt	11,195,659.89	152,598.37	11,348,258.26	11,495,435.22	[illegible]	11,195,659.89	10%	1,119,565.99	800,000.00	*319,565.99*	.00	.00	12,467,824.25	12,295,435.22	*172,389.03*
5th	183	Fore River	5,287,865.43	19,965.44	5,307,830.87	5,368,867.81	[illegible]	5,287,865.43	10%	528,786.54	499,500.00	*29,286.54*	.00	402,656.25	5,836,617.41	6,270,424.06	*433,806.65*
Not in Claim	184	Moore	6,086,293.48	54,225.65	6,140,519.13	6,543,048.69	[illegible]	6,086,293.48	10%	608,629.35	656,909.92	48,280.57	.00	470,053.70	6,749,148.48	7,670,012.31	920,863.83
6th	191	Union	6,345,388.74	3,869.37	6,349,258.11	6,405,741.11	[illegible]	6,345,388.74	10%	634,538.87	766,260.00	131,721.13	.00	1,100,000.00	6,983,796.98	8,272,001.11	1,288,204.13
7th	196	Sparrows Pt	1,123,782.08	.00	1,123,782.08	1,142,822.60	[illegible]	1,123,782.08	10%	112,378.21	115,400.56	3,022.35	.00	112,666.84	1,236,160.29	1,370,880.00	134,719.71
8th	226	Sparrows Pt	10,891,429.05	13,118.77	10,904,547.82	11,149,326.78	[illegible]	10,891,429.05	10%	1,089,142.91	1,057,500.00	*31,642.91*	.00	837,579.61	11,993,670.73	13,044,406.37	1,050,735.64
9th	230	Union	3,192,236.09	26,433.82	3,218,669.91	3,248,727.48	[illegible]	3,192,236.09	10%	319,223.61	373,500.00	54,276.39	.00	455,000.00	3,537,892.52	4,077,227.48	539,333.96
10th	290	Fore River	4,848,595.35	18,516.22	4,867,111.57	4,897,050.31	[illegible]	4,848,595.35	10%	484,859.54	499,500.00	14,640.46	.00	479,402.75	5,351,971.11	5,875,932.96	523,981.85
11th	300	Sparrows Pt	5,122,587.87	2,465.36	5,125,053.23	5,166,180.02	[illegible]	5,122,587.87	10%	512,258.79	540,000.00	27,741.21	.00	667,860.53	5,637,312.02	6,373,840.55	736,528.53
12th	301	Union*	15,274,468.69	70,363.39	15,344,832.08	15,360,150.17	[illegible]	15,274,468.69	10%	1,527,446.87	1,694,250.00	*166,803.13*	.00	1,744,757.57	16,872,278.95	18,799,157.74	1,926,878.79
12th	301	Union**	699,746.46	.00	699,746.46	814,685.34	[illegible]	699,746.46	10%	69,974.65	26,604.85	*43,369.80*	.00	.00	769,721.11	841,290.19	71,569.08
Not in Claim	312	Sparrows Pt.**	313,594.89	.00	313,594.89	392,387.49	[illegible]	313,594.89	10%	31,359.49	28,471.31	*2,888.18*	.00	.00	344,954.38	420,858.80	75,904.42
13th	313	Moore**	488,192.25	.00	488,192.25	431,564.19	[illegible]	488,192.25	10%	48,819.22	21,402.99	*27,416.23*	.00	.00	537,011.47	452,967.18	*84,044.29*
14th	314	Harlan	13,021,970.30	48,130.79	13,070,101.09	13,172,512.23	[illegible]	13,021,970.30	10%	1,302,197.03	1,038,577.35	*263,619.68*	.00	136,389.98	14,372,299.12	14,347,479.56	*24,818.56*
15th	340	Liberty**	375,000.00	.00	375,000.00	.00	[illegible]	375,000.00	7½%	28,125.00	.00	*28,125.00*	.00	.00	403,125.00	375,000.00	*28,125.00*
16th	465	Sparrows Pt.*	15,071,907.16	152,598.36	15,224,505.52	15,240,199.30	[illegible]	15,071,907.16	10%	1,507,190.72	864,000.00	*643,190.72*	.00	.00	16,731,696.24	16,104,199.30	*627,496.94*
16th	465	Sparrows Pt.**	2,888,648.70	.00	2,888,648.70	2,669,328.70	[illegible]	2,888,648.70	7.6923%	222,203.52	238,112.40	15,908.88	.00	.00	3,110,852.22	2,907,441.10	*203,411.12*
TOTALS			139,949,965.86	654,383.35	140,604,349.21	142,126,875.98	[illegible]	139,949,965.86		13,918,960.26	12,797,488.28	*1,121,471.98*	.00	9,014,655.05	154,523,309.47	163,938,996.41	9,415,686.94

*Completed Ships. **Canceled Ships.

NOTE.—Figures in *italics* represent underpayments to shipbuilder.

EXHIBIT C

Statement Showing Amounts of Set-off and Counterclaim by United States Shipping Board Emergency Fleet Corporation on Account of Advances and Payments for Plant Additions and Improvements

Shipyard Plant	*Amount*
(a) Union (Alameda)	$1,549,848.68
(b) Sparrows Point	2,616,789.71
(c) Sparrows Point	291,143.29
(d) Sparrows Point	33,719.81
(e) Harlan	140,711.02
(f) Home Office Building at South Bethlehem	200,000.00
Gross Total	4,832,212.51
(g) Less fee for profit on construction of Liberty Plant	258,048.58
Net Total	4,574,163.93

EXHIBIT D

Statement Showing Amounts of Set-off and Counterclaim by the United States Shipping Board Emergency Fleet Corporation on Account of Miscellaneous Transactions

Item Designation	*Description*	*Amounts*
(a)	Cost of E. F. C. Audit	$ 827,331.13
(b)	Interest on $8,000,000.00 Advance	498,690.45

Item Designation	*Description*		*Amounts*
(c)	Excessive Profit Paid on Turbine Contract 4989		656,088.00
(d)	E. F. C. Surplus Steel used by Shipbuilder	$33,013.02	
(e)	E. F. C. Plant Material used by Shipbuilder	23,013.96	
(f)	Carfare paid in Error	9,718.52	
(g)	Overhead Charges paid in Error	2,128.87	
(h)	Miscellaneous Accounts Receivable	54,128.34	
(i)	Restoration of Leased Land at Harlan Plant	*2,570.00*	
			119,432.71
	Total		$2,101,542.29

Note—Figures in *italics* represent underpayments to shipbuilder.

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania
No. 11970. December Sessions, 1925

Bethlehem Shipbuilding Corporation, Ltd., Plaintiff,
v.
United States Shipping Board Emergency Fleet Corporation, Defendant

PLAINTIFF'S REPLY TO DEFENDANT'S SET-OFF AND COUNTERCLAIM

(Filed April 4, 1927)

First: Plaintiff admits that defendant is entitled to set off against the amount of plaintiff's claim overpayments in the amount of $75,904.42 under Contract 312 S. C. and in the amount of $211,919.32 under Contract 184 S. C., as set forth in paragraph Thirty-seventh of this reply, and overpayments in the amount of $189,509.20 on account of certain requisitioned vessels at the Moore plant and in the amount of $231,800.20 on account of certain requisitioned vessels at the Harlan plant as set forth in paragraph Fifty-ninth of this reply, which overpayments, totalling $709,133.14; plaintiff admits as a proper credit or set-off against the amount of plaintiff's claim. As is more particularly set forth in said paragraph Fifty-ninth, plaintiff also admits overpayments on account of certain requisitioned vessels at the Fore River plant in the amount of $144,970.08 and on account of certain requisitioned vessels at the Sparrows Point plant in the amount of $12,308.77 and except to the extent that said last mentioned overpayments or any part thereof may be

asserted and allowed as set-off against the claims averred by Fore River Shipbuilding Corporation and Bethlehem Steel Company, respectively, in their respective actions against this defendant, more particularly referred to in said paragraph Fifty-ninth, or as counterclaims against said companies, respectively, plaintiff admits and consents that for said last mentioned overpayments, totaling $157,278.85, credit by way of set-off may be given to the defendant therefor on account of the amount of plaintiff's claim.

Second: Plaintiff repeats and realleges all the allegations heretofore set forth in its statement of claim, and refers to the averments hereinafter contained for a more specific answer to the matters set forth in the affidavit of defense which are realleged as the basis of defendant's set-off and counterclaim. More specifically, plaintiff denies that the defendant acted as agent for the United States of America in connection with the contracts and matters set forth in the statement of claim and in the affidavit of defense and counterclaim; denies that any moneys paid or advanced to plaintiff were so paid or advanced with funds of the United States of America, and on the contrary avers that in all of the transactions between plaintiff and defendant set forth in the statement of claim or in the affidavit of defense and counterclaim, the defendant acted as principal and in its own behalf, and as the real party in interest under and by virtue of its charter powers, and that all moneys paid or advanced to plaintiff by the defendant were so paid or advanced by the defendant from moneys of the defendant or moneys made available to it by the United States of America to be expended by the defendant as other moneys of the defendant were expended. Any ad

mission or any answer hereinafter made regarding any transaction between plaintiff and defendant, wherein it is alleged that the defendant acted as agent for the United States of America, or paid or advanced or expended moneys of the United States of America, is qualified by the denial of such fact or facts as above set forth, with the same effect as if such denial were repeated in every case where such fact or facts are alleged.

Third: Admitted.

Fourth: Admitted.

Fifth: Admitted.

Sixth: Plaintiff denies as to each and every action taken by the defendant, alleged in said set-off and counterclaim, that such action was taken solely by virtue of the power and authority conferred upon the President of the United States in and by the Act referred to in said paragraph Sixth of the set-off and counterclaim, and by the President delegated to the defendant, and for further reply, plaintiff refers to the averments contained in paragraph Second hereof.

Seventh: Plaintiff denies as to each and all of the contracts referred to in the set-off and counterclaim, which were entered into or signed by or in the name of the defendant, that such contracts were made and entered into by it by virtue of power and authority delegated to it as an agency of the United States by the President of the United States, either under the Acts referred to in said paragraph Seventh or otherwise. Plaintiff avers that each and all of said contracts were made and entered into by the defendant, as principal, and as the real party in interest thereunder, and not as the agent of th United States. It avers further that each and every

action taken by the defendant under each and all of such contracts was taken by it as principal, under and by virtue of its charter powers, and as the real party in interest thereunder, and not as the agent of the United States, and that the plaintiff at all times dealt with the defendant thereunder solely on such basis.

Eighth: Plaintiff denies that, either under the Shipping Act of 1916, or otherwise, the defendant was prohibited from entering into any of the contracts therein referred to as principal, or in its corporate or individual capacity, and further denies that under the law existing when said respective contracts were made, the defendant could enter into said contracts only as an agent of the United States of America, as its principal, and for further reply plaintiff refers to the averments contained in paragraphs Sixth and Seventh of this reply.

Ninth: Plaintiff admits that Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey, on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, but denies that it was incorporated as a reorganization of said Shipbuilding Company. It admits that on or about January 20, 1905, said Bethlehem Steel Corporation acquired the entire capital stocks (except qualifying shares held by the directors thereof) of Bethlehem Steel Company, of Union Iron Works, of Harlan & Hollingsworth Corporation, and of Samuel L. Moore & Sons Corporation, and of certain other corporations. It denies that Bethlehem Steel Company then owned and that it later transfered to Bethlehem Steel Corporation any or all of the capital stock of Fore River Shipbuilding Corporation, or any

or all of the capital stock of Penn-Mary Steel Company. It denies that Bethlehem Steel Corporation assumed control of the above named corporations, or any of them, and further denies that until the organization of the plaintiff, or at any time, it operated the business and plants of said corporations, or any of them, either as departments or divisions of a shipbuilding organization, or otherwise.

Tenth: Plaintiff admits that prior to the transactions between it and the defendant referred to, Penn-Mary Steel Company, a Pennsylvania corporation, and a subsidiary of Bethlehem Steel Company, owned, among other things, the shipbuilding plant at Sparrows Points, Md., which plant was acquired by said Penn-Mary Steel Company from Maryland Steel Company, a Maryland corporation, on or about July 1, 1916 (retroactive to March 1, 1916), and that immediately thereafter, Penn-Mary Steel Company leased said plant, together with certain other properties, to Bethlehem Steel Company, which thereafter, and until on or about November 1, 1917, operated said plant. It admits that prior to February, 1916, said plant had been operated by said Maryland Steel Company, but denies that the entire capital stock of said Maryland Steel Company or any thereof was owned by Penn-Mary Steel Company, and denies that as to any vessels requisitioned, as set forth in said set-off and counterclaim, any contracts for the construction thereof have been made with any other company or companies owned or controlled by Bethlehem Steel Corporation, by or in the name of said Maryland Steel Company. It admits that said Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and its liabilities

assumed by Penn-Mary Steel Company, as of July 1, 1916. Plaintiff admits that prior to the transactions between it and the defendant, referred to in said set-off and counterclaim, and until the acquisition thereof by the plaintiff, Fore River Shipbuilding Corporation owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by plaintiff. Plaintiff admits that on or about Jan. 17, 1905, Union Iron Works Company acquired all the properties of Union Iron Works, and that at the time of said transactions with the defendant, said Union Iron Works Company owned the shipbuilding plant which had formerly belonged to said Union Iron Works, but denies that it owned in whole or in part the capital stock of said Union Iron Works. It admits that in 1909 said Union Iron Works Company acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation, and that prior to said transactions with the defendant, and until the operation thereof was taken over by plaintiff, said Union Iron Works Company operated the shipbuilding plant known as the Union Plant, at or near San Francisco, California.

Eleventh: Plaintiff denies that the contracts made with Fore River Shipbuilding Corporation, Bethlehem Steel Company, Union Iron Works Company, Harlan & Hollingsworth Corporation, and Samuel L. Moore & Sons Corporation, respectively, for the completion of the vessels requisitioned while under construction in their respective shipyards, as averred in paragraph Eleventh, were made by the United States of America, and avers that each of said contracts was made by the defendant as principal, and as the real party in interest thereunder, and in its own behalf.

Twelfth: With respect to contracts referred to as having been, on or about October 30, 1917, in force between Samuel L. Moore & Sons Corporation and the United States, plaintiff refers to and reavers the averments contained in paragraph Eleventh of this reply. It admits that during the period of the transactions with the defendant referred to in this action, after about November 1, 1917, the plaintiff operated the shipbuilding plant at Sparrows Point, Md., therein referred to, but denies that since the completion of the vessels constructed in connection with such transactions plaintiff has continually operated or is now operating said shipbuilding plant.

Thirteenth: Plaintiff denies that the leases referred to were made pursuant to any plan for entering into contracts with the United States of America for the construction of steel vessels. With respect to the contracts referred to, for the construction of vessels requisitioned by the requisition order of August 3, 1917, plaintiff refers to and reavers the averments contained in paragraph Eleventh of this reply.

Fourteenth: Admitted, subject to the qualifications stated in paragraph Second.

Fifteenth: Plaintiff admits that at the time of the making of the contracts between plaintiff and the defendant referred to in said set-off and counterclaim, Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and the plaintiff, through its predecessors, Samuel L. Moore & Sons Corporation and Harlan & Hollingsworth Corporation, knew what the cost of building the various types of steel vessels which had prior thereto been built by such respective corporations at their respective plants had been, but

plaintiff denies that either plaintiff or any of said corporations then knew what the cost of constructing such vessels thereafter would be. It denies that the greater part of the steel, fabricated or otherwise, acquired for such shipbuilding operations had been obtained by said shipbuilding companies from Bethlehem Steel Corporation, and avers that by far the greater part of such steel had been obtained by purchase from other producers in which Bethlehem Steel Corporation had no interest. The remaining averments of paragraph fifteenth are admitted, subject to the qualifications stated in paragraph Second.

Sixteenth: Plaintiff denies that it or any of its officers or employees, including Charles M. Schwab, was entirely familiar with or had any special expert knowledge of the actual and probable cost of building the vessels for which it contracted with the defendant, or of estimating the profits to be derived therefrom, or that it or any of its said officers or employees had any better means of acquiring such knowledge or of estimating the probable cost than had the defendant. The conditions at the time of the making of said contracts were such that no person, no matter how experienced, could estimate with anything approaching certainty the probable cost of building vessels of the types and in the quantities specified by said contracts. In the negotiations between plaintiff and defendant leading up to the making of said contracts, the defendant was represented by thoroughly capable, honest and fearless officials and employees, many of whom were thoroughly experienced in shipbuilding and thoroughly familiar with the elements of cost entering directly into ship construction, and such officials and employees repre-

senting the defendant were as competent and capable to estimate the cost of such vessels as the officials and employees of plaintiff.

Seventeenth: Plaintiff denies that any false representations were made by plaintiff with regard to the cost of the vessels to be constructed under the contracts therein referred to, or any of them. It admits that at the time when the negotiations were going on which resulted in the making of the contracts dated December 31, 1917, the wages of labor to be employed on the construction of the ships to be constructed under said contracts at the Union plant of plaintiff, had been fixed for the time being to the knowledge of plaintiff, but it denies that the wages of labor to be employed on the construction of ships to be constructed under said contracts at either Fore River, Moore, Harlan or Sparrows Point plant of plaintiff at said time, either had been, or, so far as plaintiff or its representatives then knew, were about to be fixed by action of the Government. It admits that in November and December, 1917, and at various times thereafter, the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the defendant, and that such action of the Government, when taken, was known to the defendant. Plaintiff admits that at the time when the negotiations hereinbefore referred to were carried on, the United States had fixed for the time being, viz., until January 1, 1918, the base price of certain steel products used in shipbuilding, but denies that such fixing of prices covered the prices of all steel products so used, and that the prices which were then fixed were fixed for any period subsequent to January 1, 1918, and further denies that such prices were then intended to be

unchanged throughout the period of ship construction referred to in said paragraph, and denies that there was a well known and recognized price for all steel for such construction. Plaintiff further denies that the United States had at said time fixed transportation costs and that it controlled all other basic industries entering into the production of ships. Plaintiff further denies that at the time of making any of the contracts between plaintiff and the defendant, the costs of labor, or of steel, or any other costs which would enter into the cost of constructing the vessels to be constructed under said contracts respectively, were known to plaintiff, and further denies that such costs could be computed and ascertained by plaintiff. Plaintiff denies that it knew or could, at the time of making the respective contracts, determine the approximate amount and number of hours of labor, or the approximate amount and cost of material, or the amount of any other element of cost which would enter into the construction of the vessels to be constructed under said contracts.

Eighteenth: Plaintiff admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of war existed, and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and certain other industries of the United States, and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time; and if

admits that these conditions and this emergency were known to the public in general, and to the plaintiff. It avers that such extraordinary emergency and conditions, and the circumstances resulting therefrom, were better known to the defendant than they were to the plaintiff, and, except as so specifically admitted, it denies each and every averment of paragraph Eighteenth.

Nineteenth: Plaintiff admits that on or about December 13, 1917, it stated to the defendant that it was impracticable to estimate within a reasonable percentage what would be the actual cost of constructing vessels which the defendant then requested it to build, and that therefore it was impossible to submit fixed prices for such vessels, except upon a basis so far above estimated cost that any figure acceptable to plaintiff would not be acceptable to the defendant. It admits that thereupon it suggested for the consideration of the defendant that such vessels (except the troop ships subsequently covered by contract No. 182) should be constructed for the defendant on a basis for each such vessel of actual cost plus a fixed fee, with an agreed upon probable cost of such vessel, which should be increased or decreased from time to time by the amounts of any increases or decreases of wages that should be approved by the defendant, and by the net cost of any changes and extras ordered by the defendant, plaintiff to be paid, in addition to the fixed fee, one-half of any saving that might be made below such agreed upon probable cost as so increased or decreased. It denies that the defendant was an agency of the United States of America in respect to the transactions and contracts referred to in said paragraph. It admits

that the contracts between plaintiff and the defendant, referred to in the causes of action numbered First to Third inclusive, and Fifth to Sixteenth inclusive, of its statement of claim herein, were drawn in accordance with such suggestion, but it avers that the form of such contracts was agreed upon between plaintiff and the defendant openly and fairly, and after investigation by competent officials of the defendant of the merits of the various forms and terms of the contracts. It denies that it or its representatives represented that the amounts stated in said contracts as estimated actual cost of the vessels to be constructed were the probable costs, or were in close approximation to what the actual cost thereof would be, and avers that on the contrary, it stated to the defendant that estimates of cost thereof could not be made under the existing conditions, within any reasonable percentage of what would be the actual cost of construction, and further denies that it represented that either the figures proposed by it for insertion in the contracts, or those actually inserted, included any allowance to cover increases in cost which might be caused by any increases in wages over the wage schedule then in effect. It denies that it refused to undertake the construction of the vessels at sums less than those proposed by it, or less than those stated in said contracts. On the contrary, it avers that on or about December 19, 1917, it proposed to the defendant certain figures to be agreed upon as the probable costs to be specified in said contracts, and upon information and belief, that competent officers and employees of the defendant checked such figures against lump sum prices at that time current for similar vessels, and otherwise. That the defendant thereafter proposed to reduce such

figures in every case, and plaintiff agreed to such reductions, and that such figures as so reduced and as so specified in said contracts were agreed upon by plaintiff and the defendant openly and fairly, and without any representation whatsoever on the part of plaintiff with respect thereto. It avers that such contracts, referred to in the causes of action numbered eighth to fourteenth inclusive in the statement of claim herein, insofar as they respectively covered vessels of the same type and size as those to be constructed under the earlier contracts, were replicas of the earlier contracts, except that in each case the fixed fee and the figures of estimated cost were reduced by the defendant in the later contracts, and as to any vessels covered by them which were not of the same type and size as any to be constructed under earlier contracts, plaintiff denies that it made any representations as to the estimated cost of construction thereof, as averred in said paragraph Nineteenth of the set-off and counterclaim.

Twentieth: Plaintiff denies that any representations made by it or its representatives to the defendant were false, and further denies that plaintiff was in a position to know, or that it did know, what would be the approximate cost of constructing said vessels. It denies that the amounts stated in said contracts, or any of them, were known by any representatives of plaintiff to be in excess of any costs which could reasonably be anticipated, and further denies that any estimates or representations made by plaintiff were made for the purpose of enabling plaintiff to derive either excessive, unreasonable or unconscionable profits from said contracts.

Twenty-first: Plaintiff denies that the respective amounts named in said contracts, or any of them,

were objected to by any representatives of the defendant as being excessive and unreasonable, and further denies that said amounts, or any of them, were assented to by the representatives of the defendant because of any assurance given by any representatives of plaintiff that said estimates had been made in good faith, or that they were entirely fair and reasonable, or that they were the lowest sums for which the plaintiff would undertake the work in question. On the contrary, plaintiff avers that during the negotiations with the defendant, preceding the making of said contracts and before the terms thereof were agreed upon, plaintiff offered, both orally and in writing, to the defendant to enter into contracts with it for the construction of said vessels upon such terms as should be determined by the Vice-President and General Manager of the defendant; and that the terms upon which said contracts were made were approved and authorized by the defendant's said Vice-President and General Manager.

Twenty-second: Plaintiff admits that in all of said contracts, except contracts Nos. 182 S. C. and 465 S. C., the fixed fees specified therein respectively were approximately equal to 10% of the estimated cost fixed therein with respect to the respective vessels to be constructed thereunder. It avers that in said contract No. 182 S. C. there was no fixed fee or estimated cost specified, and that in contract No. 465 S. C. the fixed fee provided for amounted to approximately 7.6923% of the estimated cost provided thereunder. The plaintiff denies that the estimated cost specified in any of said contracts was a fictitious estimate of the cost of the vessels to be constructed thereunder, and further denies that the

fixed fees specified in any of said contracts were based upon any fictitious estimates of cost.

Twenty-third: Plaintiff denies that at the time of the execution of said contracts, or any of them, plaintiff was in a position to know, or had any reason to expect that the sum named in the respective contracts as a fixed fee would probably equal or exceed a fair and reasonable profit for the services to be performed under said contracts, and further denies that the terms of said contracts relating to the respective amounts of the estimated cost and "half savings" were insisted upon by plaintiff for the purpose of enabling it to derive either excessive, unreasonable or unconscionable profits from said contracts, or any of them.

Twenty-fourth: Plaintiff is advised that paragraph Twenty-fourth avers a conclusion of law and respectfully submits the same to the Court for its determination.

Twenty-fifth: Plaintiff denies that during the period referred to the United States of America had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances in the vicinity of the various shipbuilding plants operated by plaintiff, at a sum not to exceed 10% of the actual cost, or at a sum less than 10% of actual cost. Plaintiff avers moreover that because of the provisions of the contracts between plaintiff and the defendant, and the circumstances under which such contracts were made, the averment contained in paragraph Twenty-fifth of the set-off and counterclaim is immaterial and irrelevant to the effect that 10% of the actual cost with respect to contracts for building ships of

the type and tonnage of the vessels contracted for, as referred to in said paragraph, is the maximum profit which in fairness and reason, or under any principles of law, a shipbuilder, under the circumstances therein referred to is entitled to receive from the United States of America. Plaintiff, however, denies said averment, in so far as it, or any part thereof, is an averment of fact, and respectfully submits to the Court for its determination any proposition of law averred therein.

Twenty-sixth: Plaintiff admits that Charles M. Schwab was appointed Director General of the Fleet Corporation by resolution of the Trustees of that corporation passed May 16, 1918, such appointment purporting to be effective as of April 11, 1918. Plaintiff denies, however, that said Charles M. Schwab consented to act or acted as such Director General prior to April 16, 1918. Plaintiff denies that during the period from April 11, 1918, until December 12, 1918, or at any other time, said Charles M. Schwab was vested by the defendant with full power and authority to make new contracts for shipbuilding and to modify all then existing contracts for shipbuilding, and to exercise all powers of modification of then existing contracts vested in the President of the United States by the Act of June 15, 1917, and further denies that the powers vested in said Charles M. Schwab as Director General of the Fleet Corporation included the power to require and compel shipbuilding contractors to modify existing contracts by reducing the profits therein covenanted for or otherwise. On the contrary plaintiff avers that by resolution of the Board of Trustees of the Fleet Corporation adopted May 2, 1918, all contracts whether for the Operating or

Construction Divisions, after approval by the Vice-President and Secretary, were required to be submitted to the Board of Trustees for their approval. For further answer plaintiff refers to the averments contained in paragraph Twenty-seventh hereof. Plaintiff further denies that said Charles M. Schwab, acting as Director General, established with respect to other contractors a policy in behalf of the United States of reducing excessive profits under then existing contracts to not over ten per cent. of the actual and reasonable cost of construction, and that with respect to other contractors he limited the profits in contracts to be made to not over ten per cent. of such cost.

Twenty-seventh: Plaintiff denies that at the time said Charles M. Schwab was acting as Director General, he was Chairman of the Board of Directors of plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and on the contrary, avers that prior to accepting the office of Director General, he resigned from the Board of Directors of Bethlehem Shipbuilding Corporation, Ltd., and that during the time that he acted as Director General of the Fleet Corporation he was neither Chairman nor a member of the Board of Directors of Bethlehem Shipbuilding Corporation, Ltd. Plaintiff denies that by virtue of his position or otherwise said Charles M. Schwab was in control of the affairs of Fore River Shipbuilding Corporation, Bethlehem Steel Company, Union Iron Works Company, or of this plaintiff. It admits that during said period said Charles M. Schwab took no action with respect to the contracts between plaintiff and defendant, and further admits that during said period other contracts of like tenor and effect were made between plaintiff and defend-

ant, as will more fully appear by reference to paragraph Thirtieth hereof, and that during such period, payments on account of such contracts were made by the defendant to plaintiff. Said Charles M. Schwab accepted the office of Director General of the Fleet Corporation at the insistent request of the President of the United States to whom, as well as to the officers and trustees of the Fleet Corporation, his connection with plaintiff as well as the fact that plaintiff was then under contract with the defendant to construct ships, was fully known, and because of that fact it was understood and agreed between said Charles M. Schwab and the trustees of the Fleet Corporation, as a condition of his acceptance of said office, that he should have nothing whatever to do with any transactions between the defendant and plaintiff relating either to contracts previously made or to the making of new contracts and such matters were committed to the Vice-President and General Manager of the Fleet Corporation subject to the approval of the Board of Trustees. Plaintiff avers that during said period said Charles M. Schwab took no part, either directly or indirectly, in any transactions between plaintiff and the defendant.

Twenty-eighth: Plaintiff denies that during the period aforesaid said Charles M. Schwab was placed by the Trustees of the defendant in a position of power and authority over all contracts for ship construction, or that he had the right and power to discharge or remove any subordinate official of the defendant who did not carry out his commands or that he was in a position of practical domination over the various officials of the defendant charged with the duty of preparing and executing the contracts referred to. Plaintiff avers that his powers

were specifically limited with respect to any transactions between plaintiff and defendant by the understanding and agreement referred to in paragraph Twenty-seventh, and that said Charles M. Schwab was neither in position to dominate nor did he attempt to dominate or in any way influence the officials of the defendant in preparing, executing and carrying out the contracts with plaintiff. Plaintiff also denies that said Charles M. Schwab had the power to direct the terms on which said contracts should be entered into by and in the name of plaintiff, and further denies that he did in fact direct the terms on which said contracts were entered into. On the contrary, plaintiff avers that said contracts were negotiated by others on behalf of plaintiff and of the defendant respectively without any interference on the part of said Charles M. Schwab.

Twenty-ninth: Plaintiff respectfully submits to the court for its determination the propositions of law therein averred but plaintiff denies in so far as it may be an averment of fact the averment that the defendant at the time therein referred to had the power to require the shipbuilder who had entered into a contract with the defendant, whether made by the defendant in its own behalf or as agent of the United States, to consent to a reduction of the amounts agreed upon in such contract for profits and half-savings or to reduce the profits thereby covenanted to be paid.

Thirtieth: Plaintiff admits that on or about the dates specified therefor in said paragraph, plaintiff and the defendant made and entered into the contracts listed in said paragraph covering the construction by plaintiff for the defendant at the re-

spective plants specified therein of vessels of the number, type, and deadweight carrying capacity specified in said paragraph. Plaintiff admits that the nominal dates of said contracts do not represent the dates on which the formal contracts came into effect, but avers that all of the essential terms of said contracts numbered 177, 178, 179, 182, 183, 184, 191 and 196, dated December 31, 1917, were agreed upon by the parties thereto on or about January 3, 1918, and that similarly, all the essential terms of said contracts numbered 226, 230, 299, 300, 301, 312, 313 and 314 were agreed upon by the parties thereto on March 18, 1918 as to said contract No. 226, on April 22, 1918 as to said contract No. 230, on April 30, 1918 as to said contracts Nos. 299, 300 and 301, and on May 15, 1918 as to said contracts Nos. 312, 313 and 314. Contract No. 465 S. C., dated July 15, 1918, was delivered and took effect subsequent to January 28, 1919. Plaintiff further avers, that all of said contracts dated December 31, 1917, were executed and delivered prior to March 1, 1918. Contracts Nos. 312, 313 and 340 were cancelled. Contracts Nos. 230, 299, 300, 301 and 314 were simply replicas of earlier contracts, except as to the construction of certain cargo vessels under said Contract No. 314 which were different in size and type from any vessels covered by previous contracts, and with the further exception that the fixed fees and estimated costs specified in such later contracts were lower than the fixed fees and estimated costs for similar vessels fixed in such earlier contracts.

Thirty-first: Admitted.

Thirty-second. Admitted, except as to Contracts 182 S. C. and 465 S. C., which contracts differ

from the other contracts as stated in paragraph Thirty-third and in other respects as by reference to said contracts will more fully appear.

Thirty-third: Plaintiff admits that Contracts 182 S. C. and 465 S. C. differed from the other contracts in the particulars stated and in other particulars as by reference to said contracts will more fully appear. Plaintiff respectfully submits to the Court for its determination the proper interpretation of said contracts respecting the amount of profits and compensation on account of savings to which plaintiff is entitled thereunder, and in so far as it may be an averment of fact, plaintiff denies that the provision for half savings in Contract 465 S. C. is unconscionable, void and unenforceable.

Thirty-fourth: Plaintiff denies that the estimated actual cost under Article XIX of any of the contracts referred to in paragraph Thirty-fourth of the set-off and counterclaim is or was incapable of computation, and respectfully submits the proper construction of each of said contracts to the Court for its determination. It admits that at the time of the making and delivery of the contracts referred to in said paragraph and thereafter, there was in effect no wage schedule adopted by the Shipbuilding Labor Adjustment Board in force at any one of the Navy Yards specified in such contracts respectively. It avers, however, that on January 3, 1918, there were wage schedules in force at the respective Navy Yards specified in such contracts, which schedules had been approved by the Navy Yards District Wage Boards; that the defendant had in November and December, 1917, ordered and directed plaintiff to put such schedules into effect in its respective

East Coast plants; that the words 'as adopted by the Federal Adjustment Wage Board' were inserted in such contracts through mutual mistake and error; and that the parties to such contracts in using in Article XIX of each thereof the language which is quoted in said paragraph Thirty-fourth, intended to indicate and specify such wage schedule in force on January 3, 1918 at such respective Navy Yards. It avers further that throughout the performance of such contracts and in making changes in wage schedules, and otherwise in making adjustments and payments under such contracts, the parties hereto mutually adopted and acted upon such intended meaning of such provision. Plaintiff denies that the half-savings clause in any of said contracts is void for uncertainty or for any other reason.

Thirty-fifth: Plaintiff admits that at or near the completion of the vessels built under such cost-plus fixed fee, plus savings contracts, and thereafter, it requested payment from the defendant of the amounts which were not only claimed by it to be due, but which plaintiff avers were actually due to it on account of savings, and it admits that the defendant paid to it an aggregate of $9,014,633.05 on account thereof. It denies that the moneys so paid, or any part thereof, were paid either under mistakes of law, or without warrant of law, or under erroneous construction of the respective contracts, and further denies that the payments so made were made with moneys of the United States.

Thirty-sixth: Admitted, except that plaintiff denies that such payments on account of half savings are recoverable payments to shipbuilder on half savings as stated in the heading of Column 15 of Exhibit A.

Thirty-seventh: Exhibit A, in so far as it purports to show recoverable overpayments to plaintiff on account of profit and half savings, is incorrect in that it does not take proper allowance in accordance with the provisions of the contracts for the compensation payable to plaintiff on account of fixed fees and half savings as provided by the contracts containing such provisions, but is based upon an arbitrary disallowance of the profit fixed by the contracts and the substitution therefor of a fixed percentage of actual cost as defined in the contracts and as admitted by defendant. Plaintiff is therefore advised and avers that Exhibit A, in so far as it purports to show such overpayments, is irrelevant and immaterial. In so far as Exhibit A purports to show cost and overpayments on account of cost, it is incorrect as appears by reference to Exhibit No. 1 hereto attached, showing in detail with respect to each of said contracts the amount payable to plaintiff in accordance with the provisions thereof, on account of vessels constructed and of cancelled vessels under such contracts (not including amounts payable on account of improvements, extensions and construction of plants), the amount heretofore paid, and the amount overpaid or underpaid, as the case may be. As appears from said Exhibit No. 1, plaintiff has received overpayment on account of Contract 312 S. C. to the amount of $75,904.42, and under Contract 184 S. C. to the amount of $211,919.32. Except as so admitted plaintiff denies that it has received any overpayments under said contracts.

Thirty-eighth: Plaintiff denies that the sum of $4,832,212.51, or any part thereof, was advanced by the defendant either as agent or otherwise and that said amount, or any part thereof, was received

by plaintiff to its use. Plaintiff further denies that said sum or any part thereof, was received by plaintiff in any other way or upon any other consideration than as repayment to plaintiff of the cost and expense incurred by it for and at the instance of and for the benefit of the defendant and as agreed and provided for in the contracts hereinafter referred to. Plaintiff admits that in order to provide it with additional facilities with which to expedite the construction of vessels for the defendant, it and the defendant made and entered into contracts which are referred to in the First, Second, Fifteenth and Eighteenth causes of action in plaintiff's statement of claim herein, copies of which contracts are thereto annexed and marked Exhibits 1-A, 1-B, 1-C, 2-A, 2-B, 15, 17, 18-A and 18-B, respectively, to which contracts plaintiff refers for the provisions thereof, and that under and pursuant to the terms of said contracts the defendant paid to plaintiff or upon its order for the work and materials provided and furnished by plaintiff or procured by it to be performed and furnished in accordance with said contracts the respective amounts set forth in Exhibit C annexed to the set-off and counterclaim.

Thirty-ninth: Plaintiff denies that the terms and provisions of said contracts were improvident, unreasonable or unconscionable, or that the amount of money paid or advanced to plaintiff in accordance therewith constituted a gift paid without warrant of law or under a mistake of law. Said moneys were expended for making necessary additions and improvements to the shipbuilding facilities of plaintiff for the purpose of expediting the construction of vessels under the contracts between plaintiff and defendant. It was recognized that such expenditures

would not be necessary in normal times and that upon the termination of the war such additions and improvements would not be required in the conduct of plaintiff's business in normal times; and it denies that said improvements have been and are of great value to plaintiff or that the same have been, since the completion of the vessels under contracts with the defendant, or now are, in constant use by plaintiff in its private shipbuilding work. For further answer, plaintiff refers to paragraphs Fortieth and Forty-first.

Fortieth: Plaintiff avers that the contracts referred to and which are the same contracts mentioned in paragraph Thirty-eighth of this reply speak for themselves as to the terms and provisions thereof, respectively. It denies that the right given under said contracts, respectively, to enter upon the works and remove the special improvements, tools and equipment provided thereunder was, when said respective contracts were entered into and thereafter, of no benefit or advantage to the party entering into said contracts with plaintiff. It denies that said special improvements, tools and equipment were or are incapable of removal or incapable of removal without destruction of all practical value, or that the cost of removing said special improvements, tools and equipment would exceed any value which the same might have.

Forty-first: Plaintiff admits that no determination of the value of the tools and improvements therein referred to has been made as provided in said respective contracts, and avers that the defendant has taken no steps to have such a determination made as provided therein. It admits that plaintiff and the

defendant made no agreement concerning any claim of the United States of America with respect to the funds paid by the defendant on account of said special improvements, tools and equipment. Plaintiff respectfully submits to the court for its determination the propositions of law averred in said paragraph but denies that the fair and reasonable value of said improvements, tools and equipment is $4,574,163.93, or is more than $85,000, to wit: it denies that the value of such improvements, tools and equipment at the Union plant is more than $15,000, that the value of those at the Harlan plant is more than $5,000, that the value of those at the Sparrows Point plant is more than $55,000 and that the value of the office building at South Bethlehem is more than $10,000. Plaintiff avers that after the completion of such improvements and facilities covered by said contracts, it entered into negotiations with the defendant for the purchase from the defendant of such improvements and facilities under and pursuant to the terms and conditions of said contracts; that the defendant at that time and from time to time thereafter made appraisals of the value of such improvements and facilities and communicated the results thereof to plaintiff, who in turn made estimates of the value to it of such improvements and facilities; that thereupon, after long negotiations during which plaintiff was ready and willing to purchase such improvements and facilities at prices which to it at that time seemed reasonable and urged early action on the part of the defendant, in February, 1920, it entered into an agreement with representatives of the defendant for the purchase of such improvements and facilities, but the Board of Trustees of the defendant repudiated the authority of such representatives and repudiated such agree-

ments; that thereafter plaintiff entered into negotiations with the Construction Claims Board of the defendant for the purchase of such improvements and facilities and made an offer of about One million three hundred thousand Dollars ($1,300,000) therefor, which offer such Claims Board transmitted to the Board of Trustees of the defendant with the recommendation that it be accepted, but such Board of Trustees delayed consideration of such offer until plaintiff, in view of changed conditions, withdrew the same; that thereafter and on or about September 15, 1921, plaintiff notified the defendant to remove the greater part of such improvements and facilities and subsequently and in or about July, 1925, again notified the defendant to remove the whole thereof. But the defendant, after said notice of September 15, 1921, requested extensions of time within which to begin the removal of such improvements and facilities and plaintiff from time to time gave extensions of such time so long as negotiations between plaintiff and the defendant for the settlement of other controverted questions between them should be proceeding expeditiously; that the defendant has long since terminated such negotiations and all such extensions of time have long since expired and under the terms and provisions of said contracts all such improvements and facilities have been abandoned to plaintiff.

Forty-second: Plaintiff admits that on or about August 22, 1917, the defendant issued to Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company, Harlan & Hollingsworth Corporation and Samuel L. Moore & Sons Corporation orders for the completion by said companies for the defendant of the vessels which

had been requisitioned at their respective shipyards by the orders of August 3, 1917, substantially in accordance with the plans and specifications provided by the original contracts for such vessels between said respective companies and the purchasers or former owners thereof, and offers to said respective companies to compensate them therefor by the payment to them of the amounts specified in such original contracts then unpaid, which orders and offers were in each case, except as to the name and address of the addressee therein named and the shipbuilding company and plant referred to therein, in the same form and terms as Exhibit H attached to said set-off and counterclaim; that said orders and offers were accepted by said respective shipbuilding companies and that such acceptance by them respectively is evidenced in part by the letters of which copies are attached to said set-off and counterclaim and marked Exhibits I, J, K, L and M, respectively. It admits that the vessels which are enumerated by reference to their respective hull numbers in Exhibit F attached to the set-off and counterclaim were completed and delivered, except hulls 450 and 451, and that the completion thereof was taken over and as to all except said hulls 450 and 451 was carried out, by the plaintiff in the manner and under the circumstances averred in the Twenty-first to Twenty-fourth causes of action, inclusive, in the statement of claim herein and in the statements of claim in the three other actions against the defendant pending in this court wherein Union Iron Works Company, Bethlehem Steel Company and Fore River Shipbuilding Corporation, respectively, are plaintiffs, said actions being Nos. 11972, 11974 and 11976, respectively, December sessions, 1925. Plaintiff admits and avers that the completion thereof was

under and pursuant to the aforesaid agreements entered into with the defendant except to the extent that said agreements were changed as averred in said respective statements of claim. Such of said agreements as were changed with respect to the basis of payment to plaintiff for the completion of the respective vessels completed thereunder are also indicated in the last column of said Exhibit F. Plaintiff avers that the defendant made said agreements as the principal and the real party in interest thereunder and that the respective shipbuilding companies with which said agreements were made and plaintiff at all times dealt with the defendant thereunder solely on such basis.

Plaintiff denies the averment in paragraph Forty-second of the set-off and counterclaim that the dates set forth in said Exhibit F in the column headed "Date of Acceptance of Terms of Completion" show the dates of the builders' acceptance of terms of compensation for the requisition of the respective vessels and avers that the vessels when requisitioned were not the property of the respective shipbuilders but of the various owners for whom they were being built, except as to the interest of the shipbuilder therein on account of and to the extent of its labor and materials expended thereon which then remained unpaid for; that compensation for the requisitioning of said vessels was due to and, as plaintiff avers upon information and belief, was made to said respective owners and not to the shipbuilders, except as to the amounts unpaid to the shipbuilders for labor and materials expended thereon or obtained therefor prior to the requisition order, which amounts were merged in the payments agreed to be

made by the defendant to said respective shipbuilders for the completion of said vessels.

Forty-third: Plaintiff admits that the defendant made payments to plaintiff on account of the completion of the requisitioned vessels referred to in the column marked (2) of Exhibit B attached to said set-off and counterclaim in the aggregate amounts, respectively, which are set forth in the column marked (4) of said Exhibit B. Plaintiff denies that in making said payments or any of them the defendant acted for the United States of America and denies that said payments or any of them were made out of the funds of the United States. Plaintiff denies as to each of said requisitioned vessels that Exhibit B shows the amount of total credit earned by the shipbuilder for the construction thereof, and further denies that overpayments with respect to any of them were made to plaintiff in the respective amounts set forth in the column marked (6) of said Exhibit B or in any of the amounts set forth in the columns marked (7), (8), (9), (10), (11) and (12) thereof. Plaintiff attaches hereto marked Exhibit 2 a statement of the amounts which became due to plaintiff for the construction of said requisitioned vessels and shows in the last column thereof by the figures printed therein in italics the amount of any overpayment made to plaintiff on account of any of said vessels. Plaintiff denies that any overpayments were made to it on account thereof in excess of the respective amounts shown therein. Said exhibit also shows the requisitioned vessels upon which there are amounts still due and unpaid to the shipbuilders as averred in plaintiff's statement of claim herein and in the respective statements of claim in said three other actions pending.

in this court hereinbefore referred to. Plaintiff denies that the defendant has made overpayments to plaintiff with respect to all of said requisitioned vessels taken together in the sum of $373,767.94 as averred in said paragraph Forty-third, or in any other amount whatsoever, and avers that there is due and unpaid on account of the completion of said requisitioned vessels the sum of $656,539.98 as shown in said Exhibit 2 hereto attached.

Forty-fourth: Plaintiff denies that either at the beginning of the war and prior thereto or at any time between the beginning of the war and the issuing of the requisition order of August 3, 1917, the customary hours of labor at the shipyards at which said vessels were requisitioned were from 9½ to 10 hours per day and avers that the customary hours of labor at the Fore River, Moore and Union plants were 8 hours per day, and at Harlan and Sparrows Point plants 9¼ hours per day. It admits that the contracts under which the vessels requisitioned were being constructed for private purchasers (except 3) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that the respective shipbuilding corporations were not entitled under such contracts, in the absence of special agreements with respect thereto with the owners for whom the vessels were under construction, to additional compensation for overtime work on such construction. It avers that as to some of said vessels at the time of the requisition thereof negotiations were in progress with such owners for the employment of overtime work in the construction thereof and for the payment by such owners of compensation to the shipbuilder determined by the application to the amount of over-

time bonus paid for direct labor on such vessels of the same overtime coefficient as is hereinafter referred to. It denies that said shipbuilding corporations had in any instances, except such customary instances of temporary emergency or necessity as may have arisen in the ordinary course of the work, employed overtime labor in the construction of the vessels in the absence of such special agreement with the owner for compensation therefor.

Forty-fifth: Plaintiff admits that during the war the Government in furtherance of the war shipbuilding program directed that with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation eight hours a day should constitute a normal time for employment of labor and that for all labor employed over eight hours a bonus at times of 50% and at other times of 100% should be paid and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of 100% per hour should be paid and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is 50% or 100%.

Forty-sixth: Plaintiff admits that during the period of construction and completion of the requisitioned vessels subsequent to said requisition order the respective shipbuilders, including plaintiff, employed overtime labor in the construction thereof. It denies the averment that such overtime in excess of eight hours per day did not (except in occasional and rare instances) exceed the normal and customary period of labor in force prior to the directions referred to in paragraph Forty-fifth of

the set-off and counterclaim and further denies that such normal and customary period was from 9½ to 10 hours, but on the contrary avers that it was as averred in paragraph Forty-fourth hereof.

Forty-seventh: Plaintiff avers that the amounts included in the statements rendered by it to the defendant for compensation on account of overtime work were arrived at by applying to the amount of overtime bonus paid to the workmen directly engaged in the construction of the vessels various coefficients and that the defendant had agreed to pay the amounts so arrived at in consideration of the employment of overtime labor on such vessels by agreements in writing. Said agreements are contained in letters which passed between the shipbuilders and the defendant, copies of which marked Exhibits 3 to 14, inclusive, are hereto attached and made a part of this reply. Plaintiff denies that said coefficients or any of them were based on any unwarranted assumption as averred in paragraph Forty-seventh. It denies that, as averred in said paragraph, the payment of the overtime coefficient of 2.625 resulted in payment to it of $2.625 for every dollar paid to the workmen for overtime bonus. It avers that in addition to the amount of overtime bonus paid to workmen directly employed in the construction of the vessels said shipbuilders paid bonus for overtime also to their workmen who were employed in the operation of the respective plants and whose wages were not charged as direct labor on any of said vessels but became a part of their overhead expense. The overtime coefficient in each case was paid as compensation to the shipbuilder for the amount of overtime bonus so paid to others than workmen directly employed on the vessels as well

as for the increase in other overhead expenses and the loss resulting to the shipbuilders from decreased efficiency of the workmen during the overtime hours of employment. It avers that the various overtime coefficients which were adopted and applied to the overtime bonus paid for direct labor and which the defendant agreed to pay were arrived at as follows (the computations for convenience being reduced to units of a dollar):

"Time and a Half"

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under coefficient of 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency 3/8 of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of	

item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours' overtime	$2.625

"Double Time"

Shipbuilder pays workmen for overtime of one hour:

(a) At rate of $1 per hour	$1.00
(b) Bonus paid double time per hour	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$2.00

Shipbuilder receives under coefficient of 1.8125, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency 3/8 per hour	.375
(3) *Increased overhead 50% (1/2 hour plus 1/8 of an hour)	.4375
Total	$1.8125

*The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

"Double Time on Sundays and Holidays"

Shipbuilder pays for each one hour overtime bonus of $1.00

No loss in efficiency.
* Increased overhead 50% of one-half hour .25

$1.25

* The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

Plaintiff avers that in the charges to the defendant for overtime work said respective coefficients were applied only to the amount of overtime bonus paid to the workmen directly employed in the construction of the respective vessels.

Forty-eighth: Plaintiff denies that it did not incur any substantial increase in overhead by reason of the overtime work, and avers that its overhead expense, both by reason of overtime bonus paid to its workmen who were engaged in the operation of its plants but not directly employed in the construction of particular vessels, and in other respects, was materially increased thereby over what would have been the overhead expense in performing the same amount of work in the normal operation of the plants during the regular hours of employment. It denies that the efficiency of the labor was not thereby decreased and that the hours during which the individual laborers were employed were not increased beyond the hours which had been customary in the shipbuilding industry prior to the war. It denies that the efficiency of the individual laborers during the period of their overtime employment was no less than the efficiency during the eight hours of their regular employment.

Forty-ninth: Plaintiff admits that from time to time it included in its statements to the defendant on account of the overtime coefficients the amounts specified in the column of Exhibit 2 hereto attached bearing the heading "Overtime Coefficient" and that payments on account of said amounts were made by the defendant and are included in the amounts set forth in the column of said Exhibit 2 bearing the heading "Total Payments to Shipbuilders". It denies that the amounts so paid or any part thereof were paid either under mistakes of law, without warranty of law, or without authority therefor. It admits that the amounts so included by plaintiff in its statements to the Fleet Corporation on account of overtime coefficient over and above the amount of overtime bonus paid to workmen directly employed in the construction of the vessels amounted to $934,140.11. Plaintiff denies that the payments made by the defendant on account thereof were made on behalf of the United States of America.

Fiftieth: Plaintiff admits that there were no provisions in any of the contracts referred to in paragraph Fiftieth whereby the United States of America was required to advance any moneys to plaintiff as distinguished from the making of reimbursement by the defendant to plaintiff for payments on account of the cost of construction of the vessels and of plant improvements thereunder. It admits that on or about April 24 and June 14, 1918, the defendant advanced to plaintiff $3,000,000 and $5,000,000, respectively, amounting in the aggregate to $8,000,000, but denies that said advances were made out of Government funds. It admits that said advances were made during the period when Charles M.

Schwab was acting as Director General of the defendant and avers that said Charles M. Schwab took no part whatever in the negotiations between plaintiff and the defendant with respect to such advances or either of them and that he in no way took part in or influenced the making thereof. With respect to the averments in paragraph Fiftieth concerning the exercising of control and domination by said Charles M. Schwab and his standing in an alleged dual relationship, plaintiff refers to and repeats the denials and averments in paragraphs Twenty-sixth, Twenty-seventh and Twenty-eighth of this reply. Plaintiff admits that the $8,000,000 so advanced to it by the defendant was deposited by plaintiff in general accounts, mingled with its other funds and used as working capital in connection with contracts between plaintiff and the defendant referred to in the set-off and counterclaim. It denies that any part thereof was used in carrying on its private and general business. It admits that it collected from the banks in which such funds were deposited interest on its daily balances. It avers that such advances were made by the defendant to enable plaintiff to expedite the construction of vessels then under construction by plaintiff for the defendant upon the understanding and agreement that the repayment of such advances should be effected by the deduction from time to time from amounts due from the defendant to plaintiff on account of the construction of such vessels of amounts aggregating the amounts of such advances but without any agreement on the part of plaintiff to pay any interest on account of such advances. Plaintiff admits and avers that such advances were repaid to the defendant in such manner by deducting from moneys due and owing from

the defendant to plaintiff on account of the construction of such vessels the amounts set forth in Exhibit E attached to the set-off and counterclaim in the columns thereof bearing the heading "Payments". Plaintiff denies that either the United States or the defendant is entitled to recover either the bank interest allowed or the difference between the same and interest at 6 per cent. as averred in said paragraph Fiftieth. It avers that at the time of such repayments the defendant did not make any claim or demand for the payment of any interest on account of such advances but accepted repayment as aforesaid in complete satisfaction of the obligation of plaintiff on account of such advances.

Fifty-first: Plaintiff admits that before it submitted its bid for the construction of Curtis marine propelling equipment covered by the contract of September 30, 1919, which is the subject of plaintiff's Nineteenth cause of action in its statement of claim herein, plaintiff made an estimate of the cost of constructing and furnishing said equipment and avers that such estimate was made carefully and honestly and according to the best information available to plaintiff as to the probable cost thereof.

Fifty-second: Prior to May 17, 1919, the defendant requested not less than eight of the principal manufacturers in the United States of Marine turbine engines and equipments to submit to it bids for the construction and furnishing, in accordance with the specifications of the defendant therefor, of marine turbine equipments, together with certain specified spare parts and accessories therefor, for eight ships, requiring two units of such equipment for each ship, with alternative bids for like equipment

for lesser numbers of ships. Pursuant to such request plaintiff on or about May 16, 1919, submitted to the defendant its bid for the construction and furnishing of such turbine equipments and spares, which bid for such equipments for six ships, the number thereof for which the contract with plaintiff of September 30, 1919, was subsequently made, was in the amount of $1,573,320 with the additional sum of $39,000 for the spare parts required to be furnished therewith. At or about the same time bids for similar equipment were received by the defendant pursuant to such request from seven other bidders, including the principal manufacturers of such equipment in the United States. All the bids so received were opened by the defendant on May 17, 1919, and the bid so submitted by plaintiff for said equipments for six ships, as well as plaintiff's alternative bids for such equipments for greater and lesser numbers of ships, was substantially lower than any bid submitted by any of said other bidders.

Thereafter, and before said contract of September 30, 1919, was entered into, certain changes were made in the materials of which certain parts of said equipments were to be constructed, whereby the cost of constructing the same would be increased, and the price to be paid to plaintiff for the construction and furnishing of said equipments for six ships and the spare parts therefor was thereupon fixed by agreement between plaintiff and the defendant at the sum of $1,702,320, of which $1,661,670 was to be paid for said equipments and $40,650 for the spare parts to be furnished therewith. Said contract of September 30, 1919, was thereupon entered into be-

tween plaintiff and the defendant for said sum so agreed upon.

Said bid so submitted by it on May 16, 1919, was based upon plaintiff's estimate, carefully and honestly made and according to the best information available to plaintiff, of the probable cost of constructing and furnishing said equipments and spare parts; and of the expense to be incurred in connection with the installation and testing thereof, together with a reasonable allowance to cover contingencies and profit.

Plaintiff denies that, apart from the submitting of its bid therefor in competition with other bidders as aforesaid, it made any representations to the defendant with respect to the probable cost of construction of said equipments or plaintiff's estimate thereof or with respect to the amount of the percentage over plaintiff's estimate of the cost which was included in said bid to cover prospective profit to plaintiff. Plaintiff denies that it made any false representations to the defendant either with respect to its estimate as to the cost of construction of said equipments, or the prospective profit to be derived by plaintiff therefrom, or in connection with the increases over the price bid by plaintiff which were agreed to before the contract was drawn and entered into as hereinbefore averred.

Plaintiff denies that at any time at or before the date when said contract was entered into it knew that said sum of $1,661,670 was in excess of the probable cost of construction by any greater sum than would yield a reasonable profit to plaintiff and denies that at any such time plaintiff knew that said price for said equipments would result in either

excessive, unreasonable, unconscionable or extortionate profits to plaintiff, and further denies that either excessive, unreasonable, unconscionable or extortionate profits have resulted or will result to plaintiff from the performance of said contract.

Fifty-third: Plaintiff denies that in entering into said contract the defendant relied upon representations of plaintiff as averred in paragraph Fifty-third. It denies that the defendant has paid to plaintiff either said sum of $1,661,670 for said equipments or the sum of $1,702,320 for said equipments and the spare parts therefor furnished by plaintiff under said contract, and avers that of said last named amount there is due and unpaid to plaintiff from the defendant the sum of $90,019.55 with interest thereon from the first day of February, 1921, as is averred by plaintiff in the Nineteenth cause of action in its statement of claim herein.

Fifty-fourth: Plaintiff denies that either the amount paid to it under said contract or said sum of $1,702,320 when fully paid to plaintiff has yielded or will yield to it either extortionate, unreasonable or unconscionable profits and further denies that the profits either derived or to be derived by plaintiff from the payment to it of said amount as provided in said contract have amounted or will amount either actually or approximately to 78% of the cost of construction of the equipments and spares furnished by plaintiff under said contract.

Fifty-fifth: Plaintiff admits that the defendant has paid to plaintiff on account of the contracts referred to large sums of money, the exact amount of which as to each of said contracts, except contracts

184 and 312, is more particularly averred in plaintiff's statement of claim herein. It denies that the sums so paid have amounted to as much as $250,000,000 or to any greater amount than the aggregate of said amounts averred to have been paid on account of said contracts in said statement of claim and, as to said contracts 184 and 312, in the Thirty-seventh paragraph of this reply. It further denies that said payments or any part thereof were made by the defendant on behalf of the United States or with funds of the United States. It admits that each of said contracts, except contract 340 S. C., in Article XVI thereof, and that said contract 340 S. C., in Article XIX thereof, required plaintiff to establish and keep suitable accounts and records which should show the actual cost of all the work under the contract but plaintiff avers that said contracts speak for themselves as to the requirements thereof concerning the keeping of accounts and records of cost and refers to the provisions of said contracts as attached to and made a part of its statement of claim herein and in particular to said Article XVI thereof with respect to all said contracts except contract 340 S. C. and in the case of that contract to Article XIX thereof. Plaintiff further admits that under each of said contracts, except contract 340 S. C., by Article XIX thereof the defendant was required upon the completion of each vessel to make a complete audit of the cost thereof and denies that under any practice or laws or regulations other than said provisions of said contracts was the defendant required to audit plaintiff's accounts with respect thereto.

Fifty-sixth: Plaintiff admits that after the completion of said contracts the defendant made an au-

dit of plaintiff's accounts both with respect to the cost of the vessels constructed under said contracts and with respect to the various elements entering into the revision of the estimated cost as provided therein. It denies that in making the audit the defendant acted for and on behalf of the United States. It denies that plaintiff had either failed or neglected to establish or keep suitable accounts and records and denies that it either wrongfully or knowingly or otherwise established and kept either unsuitable, misleading or erroneous accounts and records. It denies that it either adopted or applied either misleading or erroneous methods or principles for keeping the cost accounts and denies that the defendant was forced to re-audit plaintiff's books and accounts by reason of any improper keeping of accounts by plaintiff. It denies that errors and mistakes were found in plaintiff's accounts and records amounting to any substantial sum whatsoever and further denies that mistakes such as are averred in paragraph Fifty-sixth were admitted by plaintiff. Plaintiff avers that its accounts with respect to the vessels constructed and other work done under its contracts with the defendant and all its other accounts which the defendant was required to, or did, audit, were kept under the supervision and direction of the defendant and that said accounts were audited currently by the auditors of the defendant as the construction work covered thereby proceeded, and that the charges billed to the defendant from said accounts were billed with the approval of, and after checking by, its said auditors; that after the completion of said contracts by plaintiff a complete audit of plaintiff's accounts with respect thereto was made by the defendant and that on such final audit

various disputes arose regarding certain items of overhead expense and certain other elements of cost incurred by plaintiff and properly entered upon its books of account, as to whether such items and elements of cost were chargeable as cost under the provisions of said contracts, some of which disputed charges have been waived by plaintiff, but plaintiff avers that the entries thereof and of all other items entered on plaintiff's books of account were properly and accurately made and that the entry thereof was necessary to the keeping of full, complete and accurate accounts of plaintiff's business and transactions.

Fifty-seventh: Plaintiff admits that the defendant's audit of its accounts was completed on or about September 1, 1922. It denies that its accounts were not accurately and truthfully kept, and that by reason thereof defendant was compelled to or did expend the sum of $827,331.13 or any sum whatever and for further answer refers to and reavers the averments contained in paragraph Fifty-sixth of this reply.

Fifty-eighth: Plaintiff denies that either the defendant or its disbursing officers or the United States of America has paid to plaintiff either the whole or any part of the sum of $119,432.71 as alleged and further denies, as to the items set forth in Exhibit D attached to the set-off and counterclaim and therein averred to be the items making up said aggregate amount of $119,432.71, that said items or any of them therein set forth have been paid to plaintiff either in whole or in part. Plaintiff further denies that the amounts set forth in said Exhibit D purporting to represent overpayments

due from plaintiff to defendant or to the United States of America as alleged in paragraphs Fiftieth and Fifty-seventh of the set-off and counterclaim have in fact been overpaid or that the same or any part thereof are due either to defendant or to the United States of America, for the reasons set forth in the respective answers to said paragraphs.

Fifty-ninth: In its reply to paragraph Thirty-seventh of the set-off and counterclaim in the Thirty-seventh paragraph of this reply plaintiff has admitted overpayments to it on account of contract 312 S. C. in the amount of $75,904.42 and under contract 184 S. C. in the amount of $211,919.32, amounting together to $287,823.74 and has admitted that to the extent of said overpayments the defendant is entitled to credit on account of the amount claimed by plaintiff in its statement of claim herein.

In its reply to paragraph Forty-third of the set-off and counterclaim in the Forty-third paragraph of this reply and in Exhibit 2 hereto annexed and therein referred to, plaintiff has admitted overpayments to it on account of requisitioned vessels other than those referred to in its statement of claim herein and in the statements of claim in the three other actions against the defendant pending in this court, hereinbefore referred to, wherein Union Iron Works Company, Bethlehem Steel Company and Fore River Shipbuilding Corporation, respectively, are plaintiffs, which overpayments are in said Forty-third paragraph of this reply and said Exhibit 2 admitted to have been made on account of the following named vessels constructed at the following named plants and in the following amounts:

Hull No.	*Shipyard*	*Amount of Overpayment*	
264, 265, 267	Fore River	$370.93	
268, 269	" "	47,331.38	
272, 273	" "	97,267.77	
	Total at Fore River		$144,970.08
115, 116	Moore	101,333.42	
117	"	88,175.78	
	Total at Moore		$189,509.20
445	Harlan	44,608.81	
453, 454, 455, 456	"	122,958.59	
457, 458	"	64,232.80	
	Total at Harlan		$231,800.20
172	Sparrows Point	4,884.84	
173	" "	7,423.93	
	Total at Sparrows Point		$ 12,308.77
	TOTAL		$578,588.25

Except to the extent that said overpayments on requisitioned vessels at the Fore River plant or any part thereof may be asserted and allowed as set-off against the claim averred by said Fore River Shipbuilding Corporation in its said statement of claim against this defendant or as counterclaim against said Fore River Shipbuilding Corporation, and except further to the extent that said overpayments on requisitioned vessels at the Sparrows Point plant of any part thereof may be asserted and allowed as set-off against the claim averred by Bethlehem Steel Company in its said statement of claim against this defendant or as counterclaim against said Bethlehem Steel Company, plaintiff admits and consents that credit by way of set-off may be given to the defendant, to the amount of said overpayments on requisitioned vessels so admitted, on account of plaintiff's claim in its statement of claim herein.

Plaintiff denies that payments made to it by the defendant were made out of moneys of the United

States and except for said overpayments so admitted plaintiff denies that it has received on account of any matters referred to in the set-off and counterclaim any overpayments or that any sum whatsoever has been improperly paid to plaintiff either without warrant of law or under mistakes of law or otherwise, and further denies that by reason of any or all of the matters set forth in the set-off and counterclaim any amount whatsoever has become due from plaintiff either to the defendant or to the United States of America.

CHARLES SINKLER,
RALPH B. EVANS,
Attorneys for Plaintiff.

State of Pennsylvania,
County of Northampton, ss:

Robert E. McMath, being duly sworn according to law, deposes and says that he is the Secretary of Bethlehem Shipbuilding Corporation, Ltd., the plaintiff named in the foregoing reply; that he has read the same and is familiar with the facts set forth therein and is authorized to make this affidavit on behalf of the plaintiff corporation; that the facts set forth in said reply so far as they have been made of his own knowledge are true and so far as made on information derived from others he is informed and verily believes them to be true and the plaintiff corporation expects to be able to prove the same at the trial of the case.

ROBERT E. McMATH.

Sworn to and subscribed before me this 23rd day of March, 1927.

G. F. Sellers,
Notary Public.

Commission expires Jan. 22, 1929.

EXHIBIT 1.

THE CONTRACT SHIP PROGRAM

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
Contract No.	Estimated cost specified in the contracts	Increase in wages to be added to estimated cost	Net cost of changes and extras to be added to or subtracted from estimated cost	Estimated cost specified in contracts revised in accordance therewith B+C+D	Actual cost determined in accordance with contracts	Surplus or deficit	Actual cost for purpose of determining savings on completed ships or in case of contract 182 profit F−G	Contractor's portion of savings—50% of E−H or in case of contract 465 the maximum specified in contract	Fixed fees specified in or calculated in accordance with contracts	AMOUNTS PAID BY FLEET CORPORATION ON ACCOUNT OF			AMOUNTS DUE FROM AND UNPAID BY FLEET CORPORATION ON ACCOUNT OF			Aggregate amount due from and unpaid by Fleet Corporation (exclusive of damages) N+O+P
										Actual cost	Fixed fees or profit	Savings	Actual cost F−K	Fixed fees or profit I−L	Savings I−M	
177	$25,440,000.00	$2,508,502.11	$ 60,495.28	$ 28,008,997.39	$22,469,2[illegible]	$53,859.63	$22,415,384.22	$2,796,806.58	$2,520,000.00	$ 22,792,960.96	$ 2,268,000.00	$ 1,980,242.43	$325,717.11	$252,000.00	$816,564.15	$744,847.04
178	8,886,000.00	1,331,183.17	188,959.00	10,406,142.17	9,993,37[illegible]	34,452.84	9,958,922.42	223,609.87	855,000.00	9,803,700.22	769,500.00	113,610.02	189,675.04	85,500.00	109,999.85	385,174.89
179	6,210,000.00	851,436.38	24,328.00	7,085,764.38	5,556,33[illegible]	3,785.34	5,552,545.07	766,609.65	600,000.00	5,657,186.58	539,998.90	515,223.37	100,856.27	60,001.10	251,386.28	210,531.21
182	.....	.....	.....	.....	11,354,28[illegible]	152,598.37	11,201,659.89	.....	1,120,165.99	11,495,435.22	800,000.00	.....	141,176.96	320,165.99	.....	178,989.03
183	5,595,000.00	776,639.20	12,791.00	6,358,848.20	5,314,44[illegible]	10,965.44	5,294,483.22	532,182.49	555,000.00	5,368,867.81	499,500.00	402,050.25	54,419.15	55,500.00	130,126.24	131,207.09
184	5,860,000.00	993,934.80	525,876.24	7,379,811.04	6,142,10[illegible]	54,225.65	6,087,923.65	645,943.69	670,000.00	6,543,048.69	656,909.92	470,053.79	100,599.39	13,090.08	175,889.99	211,919.32
191	8,514,000.00	621,947.17	103,760.52	9,239,707.69	6,354,16[illegible]	3,969.37	6,350,294.16	1,444,706.76	851,400.00	6,405,741.11	766,260.00	1,100,000.00	51,577.58	85,140.00	344,706.76	378,269.18
196	1,295,000.00	132,318.73	5,949.11	1,433,258.84	1,123,78[illegible]	.....	1,123,782.08	154,738.38	129,500.00	1,142,822.60	115,400.56	112,656.84	19,040.52	14,099.44	42,081.54	37,140.46
226	11,885,000.00	1,969,148.85	124,402.00	13,978,550.85	10,904,54[illegible]	13,118.77	10,891,429.05	1,543,560.90	1,175,000.00	11,149,326.76	1,057,500.00	837,579.61	244,778.94	117,500.00	705,981.29	578,702.35
230	4,150,000.00	336,221.90	17,604.00	4,503,826.10	3,219,61[illegible]	25,438.82	3,193,183.48	655,321.31	415,000.00	3,248,727.48	373,500.00	455,000.00	20,110.18	41,500.00	200,321.31	212,711.13
299	5,550,000.00	635,349.36	10,581.00	6,174,768.36	4,873,95[illegible]	18,516.22	4,855,441.24	659,663.56	555,000.00	4,897,050.21	499,500.00	479,402.75	23,092.75	55,500.00	180,260.81	212,608.06
300	6,000,000.00	899,911.67	41,039.00	6,940,950.67	5,125,05[illegible]	2,465.36	5,122,587.87	909,181.40	600,000.00	5,166,180.02	540,000.00	667,660.53	41,126.79	60,000.00	241,520.87	260,394.08
301*	18,825,000.00	1,531,967.62	46,532.03	20,403,499.65	15,346,57[illegible]	70,343.39	15,276,508.34	2,563,495.65	1,882,500.00	15,360,150.17	1,694,250.00	1,744,757.57	13,278.44	188,250.00	818,738.08	993,709.64
301**	.....	.....	.....	.....	699,74[illegible]	.....	.....	.....	69,974.65	814,685.34	26,604.85	.....	114,938.83	43,369.80	.....	71,569.03
312**	.....	.....	.....	.....	313,59[illegible]	.....	.....	.....	31,359.49	392,387.49	28,471.31	.....	25,792.60	2,888.18	.....	75,904.42
313**	.....	.....	.....	.....	488,19[illegible]	.....	.....	.....	48,819.22	431,564.19	21,402.09	.....	56,628.06	27,416.23	.....	84,044.29
314	11,540,000.00	2,511,201.61	333,100.50	14,384,302.11	13,073,88[illegible]	48,130.79	13,025,714.67	679,293.72	1,154,000.00	13,172,512.23	1,038,577.35	136,389.98	98,666.77	115,422.65	442,903.74	559,659.62
340**	.....	.....	.....	.....	375,00[illegible]	.....	.....	.....	28,125.00	375,000.00	.....	.....	.....	28,125.00	.....	28,125.00
465*	12,480,000.00	1,509,178.80	3,198,003.20	16,999,201.38 (1)	15,233,91[illegible]	152,598.36	15,080,915.38	600,000.00	1,200,000.00	15,240,199.30	864,000.00	.....	6,685.58	342,000.00	600,000.00	935,314.44
465**	.....	.....	.....	.....	3,033,88[illegible]	.....	.....	.....	233,375.69	2,569,328.70	238,112.40	.....	364,558.29	4,736.71	.....	359,821.58
				$153,297,628.83	$140,995,57[illegible]	954,383.35	$135,430,774.74	$14,175,113.96	$14,200,220.04	$142,126,875.08	$12,797,488.28	$9,014,633.05	$1,133,296.54	$1,902,731.76	$5,160,480.91	$5,931,916.24

*Completed Ships. ** Canceled Ships.

(1) After deducting $187,980.68 on account of decreases in prices of materials and increases in freight rates.

Note—Figures in italics are deductions or overpayments as the case may be

EXHIBIT 2.

THE REQUISITIONED SHIP PROGRAM

Hull No.	Shipyard	Amount Which Became Payable by the Former Owners and/or Fleet Corporation to the Original Shipbuilders and/or the Plaintiff on Account of: Contract Price or Cost	Changes and Extras	Overtime Coefficient	Increased Wages	Excess Deadweight Tonnage	Supplies Left on Board on Delivery	Profit on Cost Plus Contracts	Total	Total Payments to Shipbuilders	Balance Due (Figures in italics represent overpayments)
264-265-266	Fore River	$3,821,525.53*						$346,560.00	$4,168,085.53	$4,168,456.46	*$370.93*
268-269	"	2,200,000.00	$117,419.92	$222,306.80	$352,511.26		$3,955.35		2,896,193.33	2,943,524.71	*47,331.38*
272-273	"	2,820,000.00	271,381.68	86,218.60	481,400.45	$16,000.00			3,575,000.73	3,672,268.50	*97,267.77*
297-298	"	4,938,766.07*						771,025.45	5,709,791.52	5,669,020.74	*40,770.78*
115-116	Moore	1,700,000.00	113,646.23	93,716.36	241,741.34				2,149,104.43	2,250,437.85	*101,333.42*
117	"	1,981,767.43*						594,530.23	2,576,297.66	2,664,473.44	*88,175.78*
442	Harlan	875,753.88*						81,000.00	956,753.88	939,824.01	*16,929.87*
445	"	1,888,082.28*						119,070.00	2,007,152.28	2,051,761.09	*44,608.81*
446	"	1,617,222.68*						81,000.00	1,698,222.68	1,694,713.52	*3,509.16*
449	"	1,700,285.53*						81,000.00	1,781,285.53	1,724,622.89	*56,662.64*
453-454-455-456	"	2,487,772.00	242,224.50	337,604.78	337,243.40				3,404,844.68	3,527,803.27	*122,958.59*
457-458	"	1,678,500.00	62,132.72	53,593.24	391,032.27		2,925.00		2,188,183.23	2,252,416.03	*64,232.80*
450-451	"	77,332.97*						7,733.30	85,066.27	80,173.61	*4,892.66*
163	Sparrows Point	730,000.00	55,570.00						785,570.00	785,570.00	
167	"	922,500.00	68,876.37						991,376.37	991,376.37	
169	"	1,332,000.00	79,501.00	85,331.39	246,017.32	24,660.00	156.00		1,767,665.71	1,602,032.57	165,633.14
170	"	1,332,000.00	82,907.00	77,892.83	312,570.45	24,660.00	260.00		1,829,590.28	1,656,159.86	173,430.42
172	"	1,735,895.00	47,878.63	113,953.58	113,745.40				2,011,472.62	2,016,357.46	*4,884.84*
173	"	1,290,000.00	117,715.00	89,693.69	96,988.43	23,564.00	120.00		1,618,081.12	1,625,505.05	*7,423.93*
174	"	1,909,020.00	114,623.00	60,864.87	478,328.39	56,880.00	560.00		2,620,276.26	2372,906.51	247,369.75
175	"	1,909,020.00	114,640.00	36,595.00	513,328.53	56,880.00	196.00		2,630,659.53	2,351,090.72	279,568.81
134-135	Union	2,961,817.91*						299,500.00	3,261,317.91	3,260,884.91	433.00
140	"	1,050,000.00	22,330.97				1,429.67		1,073,760.64	1,073,496.89	*263.75*
142	"	1,800,000.00	21,427.60						1,821,427.60	1,821,427.60	
143-144	"	2,700,000.00	106,350.00	29,051.25	191,310.13		1,156.80		3,027,868.24	3,014,790.21	13,078.04
145-146	"	2,700,000.00	132,857.50	33,278.58	230,878.47				3,097,014.55	3,072,799.71	24,214.79
147	"	2,500,000.00	115,639.82	44,532.97	268,519.89				2,928,692.70	2,910,629.58	18,063.12
148-149	"	3,000,000.00	101,522.32	74,716.50	395,375.10		115.00		3,571,728.92	3,546,096.97	25,631.95
154	"	775,000.00	98,839.77	10,436.14	86,290.40				970,566.31	966,682.26	3,884.05
162-169	"	15,420,000.00	1,457,297.61	423,741.62	2,658,692.41		7,825.37		19,966,757.01	19,805,964.71	160,792.30
		$71,754,261.28	$3,544,782.20	$1,872,828.21	$7,395,973.64	$202,644.00	$17,899.19	$2,381,418.98	$87,169,807.52	$86,513,267.54	$656,539.98

*Cost.

EXHIBIT 3.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Boston

Aug. 21, 1917.

Fore River Shipbuilding Co.,
Quincy, Mass.

Attention of Mr. J. W. Powell.

Gentlemen:

Speeding Up of Requisitioned Ships.

You are hereby authorized to speed up the construction of hulls Nos. 268-269, now under construction in your yard, and requisitioned by the U. S. Shipping Board on Aug. 3, 1917.

This speeding up of construction will be in accordance with your letters dated July 5, 1917, and August 1, 1917, to the Pan American Petroleum & Transport Co., 120 Broadway, New York, copies of which are on file in this office.

I request that you acknowledge receipt of this communication and that you write a letter to this office properly covering this matter as outlined in the letters above mentioned.

Yours very truly,

W. H. Hand, Jr.
District Officer.

W. H. Hand, Jr./L.

EXHIBIT 4.

(Letterhead of)
FORE RIVER SHIPBUILDING CORPORATION

July 5, 1917.

Pan American Petroleum & Transport Co.,
120 Broadway,
New York, N. Y.

Attention of Mr. J. S. Wood, Vice-President.

Gentlemen:

Referring to our conversation last week on the subject of speeding up construction of Hulls 268 and 269, there is detailed below the plan of operations which was arranged with the Texas Company to expedite the delivery of their last two ships, one of which was delivered last Sunday, 22 days after launching and the second of which is due for delivery this month.

This Company worked as many men as practicable on these vessels in two shifts, one day and one night. The day shift worked 10 hours five days per week and 6 hours on Saturday, a total of 56 hours per week. The night shift worked 11½ hours each night for five nights per week, or 57½ hours per week. Work beyond these hours, or on Sundays or holidays was limited to the smallest amount practicable. The regular working hours of this plant are 8 hours per day and work beyond that number of hours is paid for on weekdays at the rate of time

and a half and on Sundays and holidays, all time is paid for at the rate of double the actual hours worked.

Under its agreement with the Texas Company this Company worked its men on the Texas Company's ships 10 hours per day, for which Fore River Company paid. In addition the men drew one hour's overtime (that is, ½ of the total number of hours worked beyond 8 hours) so that the men were paid for 11 hours. The Texas Company paid for this extra hour. Because of the longer hours worked, it was figured that the actual value of the man was only an equivalent of 9¼ hours, so that the Texas Company paid for this loss of efficiency ¾ of an hour, a total paid by the Texas Company for actual overtime hours and loss of efficiency of 1.75 hours for each 2 hours overtime actually worked. The regular overhead charge of this Company is 65%. It was figured that the corresponding overhead charge on the 1.75 hours paid for by the Texas Company should be only 50%, making a total paid by the Texas Company of 1.75 plus 50% of 1.75 equal to 2.625 hours for each two hours overtime worked by an employee of this Company.

It is estimated that a similar arrangement for Hulls 268 and 269 would increase the cost of the vessels about $50,000 each and would advance the delivery dates approximately two months each.

It would appear to this Company that a similar arrangement to the above for expediting the delivery of Hulls 268 and 269 is worthy of your earnest consideration and any further information

that you may desire in reference thereto will be gladly furnished.

Very truly yours,

FORE RIVER SHIPBUILDING CORPORATION

By J. W. POWELL,
President.

EXHIBIT 5.

(Letterhead of)
FORE RIVER SHIPBUILDING CORPORATION

August 1st, 1917.

Petroleum Transport Co.,
120 Broadway,
New York, N. Y.

Gentlemen:

Attention of Mr. J. S. Wood, Vice-President.

Referring to conference with your Mr. Wood in his office yesterday, the 31st ultimo, in reference to expediting the delivery of your vessels, namely, our Hulls 268 and 269 respectively, we have considered the items discussed in this conference and beg to advise as follows:

On July 5th, 1917, we wrote you explaining the arrangement made with the Texas Company in which the bonus for overtime together with the estimated loss in efficiency and overhead expense was accepted and paid for by them and suggest that a similar arrangement to the above for expediting the delivery of your vessels would be worthy of your earnest consideration.

On July 6th, 1917, your Company replied to the above letter advising us that your Company was willing to entertain such a proposition, providing that the delivery of the vessels be expedited two months for each ship, to effect the delivery of Hull

268 by November 15th and Hull 269 by December 15th.

As regards the above dates of delivery, we beg to advise that our program of construction was interfered with by work for the United States Government. This interference delayed the laying of the keel for Hull 268 by thirty days and Hull 269 by ninety days. The keel for Hull 268 was laid June 27th, 1917, and work on this vessel is proceeding rapidly. The keel for Hull 269 is scheduled for laying down about September 15th, 1917, which date will be met providing this Company does not receive instructions from the Government to use the slip for other purposes. We are however, of the opinion that no such instructions will be issued.

Under normal conditions of work we estimate that it will take 8½ months from the laying of the keel to the date of completion for each vessel. This period of time would bring the delivery for Hull 268 about February 12th, 1918, and for Hull 269 about June 1, 1918.

Under the conditions of operations set forth in our letter of the 5th ultimo, we estimate that a saving in time of construction would amount to 2½ months for each vessel. This would bring the estimated dates of delivery for Hull 268 about the end of November, 1917, and for Hull 269 about the middle of March, 1918. In any event under the conditions of operation as outlined, your company will secure these vessels at least 2½ months earlier than working under normal conditions of hours established at our plant.

We, of course, cannot guarantee the delivery on the dates given above, but feel justified in stating

that in accordance with our best judgment, after having given careful analysis of the existing or probable conditions, your company can feel reasonably sure of obtaining the deliveries of these vessels on or before the dates for expeditious delivery herein given.

We would respectfully request that your company give this subject earliest possible attention and authorize us to proceed on the basis outlined for the expeditious delivery, since we believe that such an arrangement would be mutually beneficial to our respective companies.

Yours very truly,

FORE RIVER SHIPBUILDING CORPORATION

By J. W. POWELL,
President.

EXHIBIT 6.

(Letterhead of)
SAMUEL L. MOORE & SONS CORPORATION
Elizabeth, N. J.

November 6th, 1917.
FC:S

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Sirs: *Attention Admiral F. T. Bowles.*

To expedite the completion of our Hulls 115 and 116, commandeered by your Corporation on August 3rd, 1917, also requisitioned as per your letter of October 17th, we respectfully request your official authorization to work overtime on these vessels until completed. The expense incurred thereby to be paid us as an extra on the following basis:

All overtime to include direct and indirect labor employed in the actual construction of the vessels as well as in the manufacture of the parts and equipment belonging thereto.

Our regular working schedule, under normal conditions, is eight hours per day, or forty-eight hours per week. In the Shipyard the overtime rates are double time, while in the balance of the Plant the overtime rates are time and one half. The rates for Sundays and Holidays are double time throughout the Plant.

Employees working on schedule piecework receive time and one half or double time, as the case may be, for their work after eight hours work (similar to premium paid day workers). This increased price shall be derived by taking the total amount earned at schedule price for the full period worked and dividing this by the hours worked, thus obtaining the hourly earnings. The premium is paid on this basis.

The additional amount over regular rates paid for overtime is one half times or once times the rates according to whether the rate is one and one-half or double time, as previously described. The above, together with loss in efficiency and overhead expense amount to 2.625 times the additional expense.

We respectfully submit this rate of 2.625 times the additional expense as a fair and equitable basis for overtime charges.

The overhead expense figured in the above does not include depreciation, administration, selling or like expenses, nor has consideration been given to the loss in efficiency due to working night shift. This latter condition will be the subject of further communication.

Respectfully

SAMUEL L. MOORE & SONS CORPORATION

By: FRED CONLIN,
President.

(2 copies sent District
Officer C. S. Bookwalter)

EXHIBIT 7.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

November 8, 1917.

Samuel L. Moore and Sons Corporation,
Elizabeth, N. J.

Gentlemen:

In Re: Overtime on Requisitioned Hulls.

Receipt is acknowledged of your letter of November 6, 1917, stating the charges you will make for overtime.

You are authorized to employ overtime to expedite the completion of your Hulls No. 115 and 116, and, for the present, this overtime will be limited by the hours of daylight.

The basis of payment submitted by you, that is, the extra cost of the overtime multiplied by 2.625 is approved. Vouchers may be submitted in accordance therewith.

Very truly yours,

F. T. BOWLES,
Manager, Division of Construction.

EXHIBIT 8.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

Dec. 8, 1917.

Mr. Henry O. Trowbridge,
Custom House,
Boston, Mass.

Dear Sir:

Re: Overtime on Requisitioned Ships.

In order to expedite the completion of all steel ships, contract and requisitioned, you will authorize the shipbuilders to work overtime on the basis outlined below. The basis will apply to lump sum contracts only, as any increase in the case of cost plus contracts is taken care of automatically. The amount of overtime which you will authorize will be left to your own discretion. In general, however, it should be limited on hull construction to the hours of daylight, while on shopwork this limit need not apply.

Granting that there may be an increase in overhead equal to the normal rate when working overtime, there is an unabsorbed amount of overhead if materially less than the total number of men employed work overtime. On the other hand, if the plant is working overtime at practical capacity, all overhead is absorbed. You should keep informed

of the conditions at each plant, and in submitting figures for overtime, you should state the average proportion of the total labor employed by that plant which is worked overtime.

The overhead charge to be allowed shall be the rate determined monthly by apportioning the total of the overhead for the month, exclusive of the extra on account of overtime, over the total labor cost for the month exclusive of overtime. In no case shall it exceed 50%.

1. Overtime for which Time and a Half is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. The loss in efficiency will be considered as ⅜ of the regular pay for the first three hours overtime, and one-half for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be figured on the sum of the other two charges.

2. Overtime after the Normal Day for which Double Time is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. Loss in efficiency will be considered as ⅜ or the regular rate of pay for the first three hours overtime and ½ for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be applied to the charge for loss in efficiency and one-half only of the total bonus paid.

You will note that the amount of overhead charged for this overtime will be the same as that for an equal amount of overtime worked on the time and a half basis.

3. Overtime on Sundays and Holidays for which Double Time is Paid.

The Corporation will pay the bonus plus an item for overhead. This item for overhead will be applied to one-half only—of the bonus paid. This charge shall apply to the first eight hours so worked, and further hours to be charged for the same as in section No. 2.

In order to provide for the payment of overtime authorized, you will instruct the shipbuilders to submit vouchers at monthly intervals for the overtime worked on each hull.

The Corporation has now under advisement the subject of lost efficiency on a night shift for which the Corporation may be liable. This will be made the subject of a later letter.

These instructions supersede all former authorizations for overtime.

Very truly yours,

F. T. Bowles,
Manager,
Division of Construction.

EXHIBIT 9.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
San Francisco

November 24, 1917.

Mr. Jos. J. Tynan, General Manager,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Plant, 20th & Michigan Streets,
San Francisco, Cal.

Dear Sir:

Overtime on Requisitioned Vessels.

This will acknowledge receipt of your favor of the 15th instant wherein you quote the factor to be charged this Corporation in working overtime when so directed.

The proposition under the head of "Union Plant —Basis of Charges", wherein you stated the factor to be charged would be 2.625 times the additional expense or wage paid to the men, which would cover the loss in efficiency, overhead expense and profit, and would be the only additional charge to this Corporation for such overtime work.

The above proposal was put forward to the Corporation, who authorize the overtime work at your yard on the above basis, said work to be at the discretion of this office with the understanding that the

work is to be done in the daylight hours or in the early part of the evening.

When you consider overtime will materially advance the delivery of the ships, I will be pleased to have you take this matter up thru our Chief Inspector Chisholm, and if then seems advisable to us, we will instruct you to work overtime.

Yours very truly.

A. F. PILLSBURY,
District Officer.

EXHIBIT 10.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Baltimore, Maryland

December 18, 1917.

Bethlehem Shipbuilding Corporation,
Harlan Plant,
Wilmington, Del.

Gentlemen:

In re: Overtime.

Enclosed please find copy of the basis upon which the Emergency Fleet Corporation are prepared to allow for charges for overtime on requisitioned vessels.

Yours faithfully,

GEO. R. McDERMOTT,
District Officer.

GRMcD-R
Enclosure.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Baltimore, Maryland

December 18, 1917.

Overtime on Requisitioned Ships.

1. Overtime for which Time and a Half is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. The loss in efficiency will be considered as 3/8 of the regular pay for the first three hours overtime, and 1/2 for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be figured on the sum of the other two charges.

2. Overtime after the Normal Day for which Double Time is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. Loss in efficiency will be considered as 3/8 of the regular rate of pay for the first three hours overtime and 1/2 for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be applied to the charge for loss in efficiency and one half only of the total bonus paid.

You will note that the amount of overhead charged for this overtime will be the same as that for an equal amount of overtime worked on the time and a half basis.

3. Overtime on Sundays and Holidays for which Double Time is Paid.

The Corporation will pay the bonus plus an item for overhead. This item for overhead will be applied to one-half only, of the bonus paid. This charge shall apply to the first eight hours so worked, any further hours to be charged for the same as in Section No. 2.

The overhead charge to be allowed shall be the rate determined monthly by apportioning the total of the overhead for the month, exclusive of the extra on account of overtime, over the total labor cost for the month exclusive of overtime; in no case shall it exceed 50%.

EXHIBIT 11.

(Letterhead of)
BETHLEHEM SHIPBUILDING CORPORATION, LTD.

December 20th, 1917.

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Attention of Rear Admiral F. T. Bowles

With reference to letter of the 18th instant from the District Officer at Baltimore, Md., in connection with overtime on requisitioned vessels at the Harlan Plant of the Bethlehem Shipbuilding Corporation, Ltd., the Emergency Fleet Corporation has already approved for overtime at the Fore River and Moore Plants of this Company, a basis of 2.625 times the overtime hours, for a settlement for such overtime. The method proposed in the enclosure accompanying the above mentioned letter is very difficult to apply and is not more accurate than that in effect at the other two Yards, and it is requested that the same overtime rate, namely, 2.625 times the actual bonus hours paid for overtime, be accepted for all of the Plants of this Company.

Respectfully,

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By J. W. POWELL,
Vice-President.

EXHIBIT 12.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

December 22, 1917.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Attention: Mr. Powell.

Gentlemen:

Re: Payment for Overtime—Requisitioned Vessels Building at Harlan & Hollingsworth Plant.

Reference is made to your letter of December 20, 1917, relative to payment for overtime at the Harlan plant. I understand that in conversation with Mr. Prior, you claim it was inadvisable during the winter months to make two hours overtime, especially on outside work, and that it would be very difficult to segregate overtime paid for at time and a half rate and that paid for at double time rate.

I also understand that Mr. Prior suggested that you write a letter bringing these facts out for our consideration, as to whether or not we should make an exception in the case of Bethlehem's plants, as regards paying for overtime.

As the above reference letter does not cover the case sufficiently for me to give consideration as to

whether or not our last instructions should be modified, so far as the Bethlehem plants are concerned, I would be pleased to hear from you further in the premises. In this connection, it should be noted that our last instructions supersede any previous instructions or authorization covering the payment by the Corporation for overtime.

Very truly yours,

F. T. Bowles,
Manager, Division of Steel Ship Construction.

EXHIBIT 13.

(Letterhead of)
BETHLEHEM SHIPBUILDING CORPORATION, LTD.

December 31st, 1917.

Admiral F. T. Bowles,
Mgr. Division of Steel Ship Construction,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sir:

The Emergency Fleet Corporation's letter of the 22nd inst. refers to the payment of overtime at the Harlan Plant in connection with requisitioned vessels and states that this Company's letter of the 20th inst. does not cover the case in sufficient detail to permit of its further consideration. Considering the Emergency Fleet Corporation's letter of December 8th to the District Officer, the method of computing payment for overtime there requires the following:

1. The determination of the overhead each month, although what is to be taken as overhead is not specified, but an arbitrary figure of 50% which must not be exceeded is included as part of this item. In one of this Company's Yards the overhead for the month of November amounted to 120%.

2. In connection with overtime for which time and one-half is paid, no loss of efficiency is provided for less than 2 hours; three-eighths of the overtime period is allowed for the first three hours and one-half for time in excess of three hours. This requires treating of each employee's overtime hours separately, depending on the number of hours he has worked and as an accounting problem means the expenditure of time and labor with no commensurately accurate result. The figures of no loss, 3/8th and 50% losses respectively for the different times worked are purely arbitrary and cannot be supported by any facts. It is equally as accurate to assume one percentage loss for any overtime hours, which from the accounting standpoint is much simpler to handle.

3. The treatment of employees' overtime hours in the case of double time weekdays and for Sundays and holidays requires the same separate treatment for each man. The assumption of the single percentage taking on the average account of all these various factors is equally accurate and far simpler from the accounting standpoint.

The system previously approved for the Fore River Shipbuilding Corporation, Union Iron Works and Moores of paying 2.625 times the overtime hours allowed is simpler, equally accurate and in the long run will not produce a materially different result.

The enormous demands for data from various sources have so overloaded the Accounting Depart-

ment that anything that throws a further load on them is a matter of serious concern and where, as in the present case, we believe there is no substantial gain; it appears to us extremely desirable that the methods applied should be of the simplest.

Very truly yours,

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice-President.

EXHIBIT 14.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

January 11, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Attention Mr. J. W. Powell, V. P.

Dear Sir:

Re: Overtime Payment.

Receipt is acknowledged of your letter of December 31, 1917.

Due to the considerations advanced both in your letter and in the interview with your Mr. Hill, the Corporation will allow for the present 2.625 times the overtime bonus in all of your plants with the exception of Samuel L. Moore & Sons' plant.

The Corporation understands that Samuel L. Moore & Sons pay double time for overtime, therefore the coefficient for this plant will be 1.8125 times the overtime bonus paid employees. This coefficient is derived as follows:

Overtime at double time—	
Bonus paid	1.0000
Loss in efficiency, 3/8 of the regular rate	.3750

Overhead, 50% of (½ bonus paid plus loss efficiency)	.4375
Coefficient	1.8125

You will note that your reimbursement for loss in efficiency and overtime in actual dollars and cents will be the same under either of the above coefficients.

The above coefficients will apply only under existing conditions. In the event that the overtime rate is changed in any of your plants you will notify the Corporation and a new coefficient will be determined.

Very truly yours,

F. T. Bowles,
Manager Division of Steel Ship Construction.

APPEARANCE

(Filed Feb. 18, 1926)

Enter our appearance for Bethlehem Shipbuilding Corporation, Ltd., the Plaintiff in the above entitled case.

CHARLES SINKLER,
RALPH B. EVANS,
Attorneys for Plaintiff.

To the Clerk of the Said Court:

February 17, 1926.

AGREEMENT OF REFERENCE

(Filed May 1, 1928)

IT IS HEREBY STIPULATED AND AGREED between the parties to the above entitled suit, acting through their respective attorneys, as follows:

1. A trial by jury is hereby waived and it is agreed that the issues of fact in this case may be tried and determined by the Court without the intervention of a jury, pursuant to R. S. Section 649 as supplemented and amended, and that review thereof may be had as authorized by R. S. Section 700 as supplemented and amended.

2. The case shall be submitted to the decision of Owen J. Roberts, Esq., as referee, to hear and determine the issues and report his findings of fact in the form of special findings, and his conclusions of law to the Court in accordance with the practice and procedure obtaining in the Courts of the Commonwealth of Pennsylvania under the provisions of the Act of Assembly of the Commonwealth of Pennsylvania, approved May 14, 1874 (P. L. 166) and the Supplement thereto, approved May 4, 1889 (P. L. 80), except as herein otherwise provided.

3. The referee shall give the parties or their attorneys thirty days' previous notice of his intention to file his report on a day to be fixed by him.

4. The referee shall receive compensation in such amount as the parties shall agree on, or as the Court shall fix, without regard to the amount of

compensation fixed by the said Act of May 14, 1874.

December , 1927

THE UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION (FORMERLY UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.)

By (Sgd) HENRY P. BROWN
(Sgd) JOSEPH J. BROWN,
Special Assistants to the Attorney General.
(Sgd) GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.
(Sgd) CHAUNCEY G. PARKER,
General Counsel for United States Shipping Board Merchant Fleet Corporation.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By (Sgd) RALPH B. EVANS.
Attorneys (Sgd) CHARLES SINKLER.

CRAVATH, HENDERSON & DE GERSDORFF,
Counsel.

(Seal)

REFEREE'S REPORT

(Filed July 24, 1930)

I, Owen J. Roberts, duly appointed Referee by decree dated April 30, 1928, and signed by Hon. J. Whitaker Thompson, report as follows:

After the order of reference was made herein I duly qualified as Referee and notified counsel of my readiness to hear the cause at their convenience. It was not convenient for counsel to present the matter to me as Referee until the early summer of the year 1929. Hearings were thereupon had by me, sitting from day to day, and adjourning only when counsel so requested. The hearings were completed on or about June 21, 1929.

Counsel then advised me that they desired to submit the matter to me upon briefs and requested time to prepare such briefs. The briefs were not filed with me within the time stipulated, but on the contrary the reply brief of the Government has not yet been submitted. It was about to be submitted when I was appointed an Associate Justice of the Supreme Court of the United States.

My said appointment makes it necessary for me to return to the Court for such action as to the Court may seem proper the record in the cause and the testimony taken before me as Referee, including stipulated matters of evidence and documentary evidence.

I accordingly transmit herewith to the Court the record papers delivered to me as Referee and the

transcript of testimony, including the documentary evidence taken before me as Referee.

My said appointment, in my judgment, disqualifies me to act further in the matter.

All of which is respectfully submitted.

(Signed) OWEN J. ROBERTS
Referee.

AGREEMENT APPOINTING SUBSTITUTED REFEREE

(Filed Mar. 23, 1931)

It is stipulated and agreed between counsel for the respective parties that William Clarke Mason, Esquire, be appointed Referee to succeed the Honorable Owen J. Roberts, with the same effect as if originally named in the Agreement of Reference heretofore filed in the above entitled cause, either party to have the right to require that all or any part of the testimony shall be taken de novo and to take additional testimony.

JOSEPH J. BROWN
Counsel for The United States Shipping Board Merchant Fleet Corporation (formerly United States Shipping Board Emergency Fleet Corporation).

RALPH B. EVANS.
Counsel for Bethlehem Shipbuilding Corporation, Ltd.

March 19, 1931

(Seal)

ACCEPTANCE AND OATH OF REFEREE

(Filed March 28, 1931)

I, Wm. Clarke Mason, the person selected as Referee in the above entitled cause, hereby file this my acceptance of the said Reference, and having been duly sworn according to law, and the required oath having been duly administered according to law, I do swear that I will faithfully and impartially perform my duties as Referee to the best of my ability and in accordance with the provisions of the statute and rules of this Court relating thereto.

(s) WM. CLARKE MASON

Sworn to and subscribed before me this 28th day of March A. D. 1931.

GEORGE BRODBECK
Clerk District Court United States Eastern District of Pennsylvania.

(Seal)

In The
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 3315 March Sessions, 1925

In Equity

The United States of America,
Complainant,
vs.
Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

No. 11970 December Sessions, 1925

At Law

Bethlehem Shipbuilding Corporation, Ltd.,
vs.
The United States Shipping Board Emergency Fleet Corporation

REPORT OF SPECIAL MASTER AND REFEREE

(Filed Feb. 7, 1936)

HISTORY OF THE CASES.

The causes of action referred to the Master and Referee making this report (hereinafter called Mas-

ter) are at issue in the United States District Court for the Eastern District of Pennsylvania, and consist of a suit in equity:

The United States of America v. Bethlehem Steel Corporation, et al., March Sessions 1925, No. 3315, and four suits at law:

Bethlehem Shipbuilding Corporation, Ltd., v. The United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11970;

Union Iron Works Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11972;

Bethlehem Steel Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11974; and

Fore River Shipbuilding Corporation, Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11976.

Trial by Jury in the cases at law was waived by written stipulation pursuant to the Federal Statutes.

There is filed of record a stipulation between the parties, appearing as Exhibit D, which disposes of

three of the suits at law: Union Iron Works Company for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11972; Bethlehem Steel Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11974, and Fore River Shipbuilding Corporation, Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11976, in which, pursuant to the agreement of the parties, judgments will be entered for the defendant as to the plaintiffs' claim and for the plaintiffs as to the defendant's counter-claim.

The issues to be disposed of are those in the suit at law of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11970, and the proceedings in equity in The United States of America v. Bethlehem Steel Corporation, et al., No. 3315, to the extent that these issues have not been settled by the several stipulations heretofore filed as a part of the record in each case.

These cases were previously referred to Owen J. Roberts, Esq., with consent of the parties, by order duly entered April 30, 1928. Hearings were had before the said Master and Referee, but before the causes could be argued by Counsel, and finally disposed of, Owen J. Roberts, Esq., was appointed a Justice of the Supreme Court of the United States. The report of Owen J. Roberts, Esq., was filed in the above entitled causes July 24, 1930, wherein he asserted his disqualification to act further in the matter by reason of his appointment as a Justice of the Supreme Court of the United States.

Pursuant to the agreement of the parties, the undersigned was appointed, March 23, 1931, substituted Special Master and Referee, in the above entitled causes, to succeed the Honorable Owen J. Roberts, with the same effect as if originally so named in the order of reference.

The Master proceeded to arrange for hearings, the parties having been given the right by the order of reference to have any or all of the testimony taken de novo.

At the hearings before the Master the testimony of certain witnesses called by the Government, and those called by Bethlehem Shipbuilding Corporation, Limited, hereinafter called "Bethlehem", was taken de novo.

The witnesses, Charles M. Schwab, and Charles Piez, who testified before the former Master, did not appear in person, but, in lieu of their testimony de novo, the testimony of these witnesses, previously taken, was introduced in evidence before the Master without objection, and appears as a part of the record before him, with the same force and effect as though these witnesses had been heard in person.

The Exhibits which have been made a part of this record were received without objection, and it was agreed by counsel for both parties that the testimony taken before the former Master, might be used by either party, to the extent desired, as a part of the record before this Master.

The hearings before the Master were followed by the filing of briefs and arguments of counsel upon the facts and the law, which counsel deemed relevant

to the issues, and thereafter the Master prepared, as of February 19, 1932, his Report upon these causes as Special Master and Referee, accompanied by his findings of fact and conclusions of law, in answer to the requests for the same by the Government and by Bethlehem and caused copies to be duly served upon the parties.

An informal discussion, with counsel for the Government and for Bethlehem concerning the conclusions of the Master produced the request from the Government that opportunity be afforded to clarify the Government's position upon the issues in these cases and to present certain modifications and additions to the Government's requests for findings of fact and conclusions of law, Bethlehem consenting, the Master announced his decision to withdraw his report as presented and to permit both parties to revise and amplify, if so advised, the requests for findings of fact and conclusions of law, and upon the filing of the same with the Master, accompanied by such additional briefs as counsel might desire to file, the Master would reconsider his decision and findings in the light of such new requests and arguments and file his Report thereon. This course was followed and, after a lapse of time, which has been a matter of regret and concern to the Master, the Master makes this report, and his findings of fact and conclusions of law based upon the revised requests for such findings and conclusions filed by the parties to these causes.

ISSUES

The many issues raised by the Government, upon the one side, and Bethlehem, upon the other, are set

forth in the pleadings both in the proceedings in equity and in the suit at law No. 11970. Stipulations by counsel have substantially limited the issues and thereby reduced the oral evidence taken at the hearings to slightly over one thousand pages.

When these cases were instituted in 1925 there was still uncertainty as to the relative responsibility of the United States of America and the Fleet Corporation for claims arising from war contracts entered into by the latter. It was not until the decision of the Supreme Court of the United States upon questions raised in such cases as United States v. McCarl, 275 U. S. 1, and Fleet Corporation v. Harwood, 281 U. S. 519, that these doubtful questions of law were disposed of, and the legal status of these parties to this litigation defined.

The claims and counter-claims presented in the two cases at issue between the parties, arise out of certain contracts entered into between the United States Shipping Board Emergency Fleet Corporation, and Bethlehem Shipbuilding Corporation, Limited, et al., for the construction of ships as a part of the program of the Fleet Corporation for immediate shipbuilding to meet the necessities of the Government in the World War. These contracts were placed for performance with the various shipbuilding yards of Bethlehem upon the east coast and the west coast and carried the following contract numbers: 177, 178, 179, 183, 184, 191, 196, 226, 230, 299, 300, 301 and 314. Of these contracts, Nos. 177, 178, 179, 183, 191 and 196 were dated December 31, 1917 and were executed February 1, 1918. Subsequently, and at different times, contracts Nos. 226, 230, 299, 300, 301 and 314 were entered into between the Fleet Corporation and Bethlehem.

The ships specified in the contracts under consideration were constructed and no questions now remain open concerning the performance of the contracts by Bethlehem. The stipulations of the parties filed in these cases eliminate any and all such questions.

The contracts in question were known as "Bonus for Savings Contracts", in that the contractor was to receive actual cost, including wage increases, plus a fixed fee, and to be paid, in addition to the fixed fee, one-half of any saving that might be made below an agreed-upon probable cost (base cost).

The position of the Government appears in paragraph Twenty-third of the Bill of Complaint in Equity, which reads as follows:

> "* * * The contracts hereinafter referred to were drawn in accordance with said proposal and the respective amounts stated therein as the estimated actual cost of construction, were represented by the Bethlehem Shipbuilding Corporation, Ltd., acting through its said representatives, as fair and reasonable estimates of said cost, based upon the wage scale then in effect and upon existing costs of material, and said corporation refused to undertake said construction if lesser sums were insisted upon by complainant.
>
> "Complainant avers that said representatives were knowingly false in that the Bethlehem Shipbuilding Corporation, Ltd., as hereinbefore set forth, was in a position to know what would be the approximate cost of constructing said vessels, and the said amounts stated in said

contracts were known by the said representatives of said corporation to be very greatly in excess of any costs which could reasonably be anticipated, based upon the wage scale then in effect and the existing costs of material. Complainant avers that said estimates and representations were made for the purpose of enabling the Bethlehem Shipbuilding Corporation, Ltd., to derive excessive, unreasonable and unconscionable profits from said contracts."

It is asserted in one of the briefs for the Government as follows:

"* * * it should be carefully noted that the Government's case does not depend upon proof that Bethlehem was in a position to determine the extent of the 'savings' which it might reasonably expect to effect. The important fact is that Bethlehem was in a position to determine the probable approximate cost of the respective tank and cargo ships in controversy upon the basis of the wage schedules referred to in the respective contracts, existing material prices, and existing efficiency, and that the base prices designated in the respective contracts were supposed to represent estimates of probable approximate cost determined upon that basis. Prices so determined afforded Bethlehem a reasonable opportunity to earn substantial 'savings' as a result of increased efficiency, and in the final analysis it is entirely immaterial to the Government's position whether or not Bethlehem was in a position to determine the approximate extent of the 'savings' which it might reasonably expect to effect by such means, or

whether it had reason to know only that such 'savings' would probably prove to be substantial, as against any given base price.

In an earlier brief the Government's position is somewhat differently stated:

"In connection with the question of reliance, while the propriety of the Government's position is not dependent upon the existence of any fiduciary relationship between it or the Fleet Corporation and Bethlehem, it should perhaps be pointed out that the relationship which actually existed was substantially equivalent to that existing between principal and agent, being described as follows in the publication issued by the Shipbuilding Labor Adjustment Board to shipbuilders under date of November 4, 1917 (Ex. G-98, Doc. Ev., p. 158):

" 'The owners of the shipyards are, during the duration of the war, merely the agents of the Government. Practically the whole shipbuilding industry of the country is being carried on for the benefit of the Government.'

"The practical situation was unaffected by the designation of Bethlehem as 'Contractor' instead of 'Agent', as in the substantially similar contracts made with other shipbuilders during September, 1917 (Exs. G-200, G-201, G-202). In both instances the contract provisions emphasized the complete control of construction vested in the Fleet Corporation which is summarized in both the 'Contractor' and 'Agent' contracts by the following provisions (See Article 24 of contracts in controversy, Article 27 of 'Agent' contracts, Exs. G-200, G-201, G-202):

> "'Control by Owner: The Contractor shall in the performance of its agreements hereunder comply with and be bound by all directions, instructions, and decisions of the Owner, or its authorized representatives, and compliance by the Contractor with any such directions, instructions, or decisions, shall be a justification and protection to the Contractor for any action so taken.'"

It is also contended by the Government that Charles M. Schwab (Chairman of the Board of Directors of Bethlehem Steel Corporation), while acting as Director General of the Fleet Corporation, caused another shipbuilder to modify existing contracts to reduce the profits to be realized from them to not more than 10% of actual cost, and that although he failed to cause similar limitations to be imposed upon Bethlehem, "as a matter of ordinary fairness and propriety" Bethlehem should be willing to accept for itself the same limitations upon profits which Schwab thought proper to impose upon the American Shipbuilding Company and should now relinquish all profits above such percentage.

In effect it is the position of the Government that because of the relations between Bethlehem and the Fleet Corporation as an agency of the Government, Bethlehem's course of conduct in negotiating and inducing the execution of the contracts in question without full disclosures of all facts known to Bethlehem in relation to the costs of the ships recently built by Bethlehem, and in failing to refund payments made thereunder, after the profits were ascertainable, sufficient to reduce Bethlehem's profits to not more than 10% of actual cost of the ships,

justifies the charges made by the Government in its Bill in Equity.

Bethlehem denies that there is any foundation in the facts showing the negotiations and the execution of the contracts in question, for a charge of fraud, and asserts that there were no such relations between Bethlehem and the Fleet Corporation at the time the contracts were negotiated or during their performance which should deny to Bethlehem the full enjoyment of all profits to which it became entitled by the contracts according to their terms. Bethlehem asserts that *in law* it is entitled to receive from the Fleet Corporation payment in full of the amounts due according to the terms of the contracts, and that there is no basis *in morals* why Bethlehem should surrender to the Government any part of these profits for which claim is made.

GENERAL FINDINGS AS TO THE CONTRACTS AND PROFITS

Bethlehem Shipbuilding Corporation, Ltd., hereafter referred to as "Bethlehem", represents a consolidation, effected at or about the time of its organization in October, 1917, of five shipbuilding companies which had theretofore been subsidiaries of the Bethlehem Steel Corporaton. Since the organization of Bethlehem, all of its stock has been owned by the Bethlehem Steel Corporation.

The names of Bethlehem's five subsidiary shipbuilding companies and the names and locations of their respective plants are as follows:

Name	*Plant*	*Location*
Union Iron Works Co.	Union	San Francisco, Calif.
Harlan & Hollingsworth Corp.	Harlan	Wilmington, Del.
Samuel L. Moore & Sons Corp.	Moore	Elizabethport, N. J.
Fore River Shipbuilding Co.	Fore River	Fore River, Quincy, Mass.
Penn-Mary Steel Co.	Sparrows Point	Sparrows Point, Md.

Each of the foregoing subsidiary companies at the time of said consolidation was an "old line" experienced shipbuilding company, employing a large, efficient and well equipped organization engaged in the business of building steel ships.

As a result of said consolidation, Bethlehem took over the operations of all five plants and became the largest shipbuilding concern in the world, both with respect to number of shipways and number of employees. During the summer of 1917, an extraordinary emergency of war existed and rendered it necessary for the United States to control the entire shipbuilding industry of the United States, and to requisition all ships suitable for war purposes then under construction at the various shipyards throughout the United States, and to enter into contracts with shipbuilders for the construction of as many additional vessels at it was possible for each

shipbuilder to construct, and to have the same constructed in the least possible period of time.

On August 3, 1917, the Fleet Corporation, acting upon behalf of the United States, requisitioned all merchant ships over 2,500 deadweight tons, then under construction in all shipyards throughout the United States, including those of the aforesaid five companies which were then subsidiaries of the Bethlehem Steel Corporation.

The Fleet Corporation and Bethlehem thereafter proceeded to negotiate the terms upon which Bethlehem would build ships.

The negotiations during late December, 1917, and early January, 1918 which resulted in the making of contracts Nos. 177, 178, 179, 183, 184, 191, 196, for the ships therein specified were, as the evidence appears to the Master, dealings at arm's length. Bethlehem was represented by two competent shipbuilders, Joseph W. Powell and Harry Brown. Fleet Corporation was represented by two equally competent shipbuilding experts, Admiral Bowles and G. S. Radford and they were advised by, and had full opportunity to advise with, Daniel H. Cox, a competent naval engineer and estimator, and Chester Cuthell, counsel for the Fleet Corporation. In addition to these representatives and officers, Fleet Corporation was protected by Charles Piez, Vice-President and General Manager who, while not a shipbuilder by experience, was a nationally known business executive of long experience.

At the time of the hearing before the Master, Admiral Bowles was dead and Cox and Cuthell were not called as witnesses. Charles Piez had testified

before the former Master and his testimony was presented to the Master from the previous record.

The testimony before the Master shows that extended conferences were had between the representatives of the Government and of Bethlehem in an effort to reach an agreement upon prices for the ships subsequently covered by the contracts dated December 31, 1917. The figures finally arrived at were the lowest Bethlehem would contract to take and were agreed to by Bowles and Radford as the best that could be obtained.

The Government seems to rest its strongest plea to support its charge of misrepresentations upon the averments and attempted proof that Harry Brown, as a basis for negotiations, created a cost chart solely from his imagination, which chart was untrue in its representations and was intended to deceive the representatives of the Fleet Corporation.

Brown, who was the Government's witness, testified to the contrary of the Government's charges. No other witness supported them. Bethlehem's witnesses denied them. They appear to persist only in the unsupported argument of Government's counsel. The chart did not purport to show facts. It purported to chart estimated costs dependent upon the uncertainties of the future. The chart was never used in any negotiations with the Fleet Corporation as an exhibit in itself or by reference to what it purported to establish. The Master finds that the chart was prepared by Harry Brown as an evidence of his best guess as to costs and without fraudulent intent.

There can be no doubt that the representatives of the Government were fully aware that Bethlehem hoped to make a substantial profit under the form of contract which was founded upon an agreed base price for the ships covered by such contract. Although agreed to, this base price was asserted by Bowles and Radford to be high. The extent of this profit was, of course, not then ascertainable. These contracts were, however, not signed until February 1, 1918 and it is fair to assume from the facts shown in the evidence that between December 12, 1917, when the negotiations began, until February 1, 1918, when the contracts were signed, Bowles and Radford, with or without the assistance of Cox and Cuthell, informed themselves sufficiently concerning the base price to be used in these contracts to enable them to reach a considered judgment as to whether, even though the contracts produced a substantial profit to Bethlehem from the "savings" realized under the terms of the contract, the net cost to the Government would be in excess of the going prices payable to other shipbuilders under then existing contracts on a lump sum or cost-plus basis.

As the Master views the evidence before him, the contracts resulted from negotiations in which both parties were represented by intelligent, well informed and experienced officers whose sole object was to make the best trade possible, under conditions which included the uncertainties of war time contingencies, the results from which were not and could not have been known at the time the contracts were made.

Radford, as a witness for the Government, and Powell, as a witness for Bethlehem, described the

situation in words which carry substantially the same thought. The statement by Powell that, at the time the contracts were negotiated, it was "impracticable to estimate within a reasonable percentage what would be the actual cost of construction" was conceded by Radford "to be a fair statement". Both witnesses testified that the prices which were agreed upon were the result of barter and trade. (Radford, R. pp. 994-995; 1000-1002, 1003, 1004-1005; Powell R. pp. 651-652; 702-704; 735, 736, 790.)

Radford testified fully before the Master in a manner which was convincing both as to his intelligence, his integrity and his sincerity. Little more is needed than a reading of the testimony of Radford, who is the Government's witness, to impel the conclusion that the charge of fraud made by the Government against Bethlehem is without foundation.

Following the conferences testified to by the several witnesses, Admiral F. T. Bowles and G. S. Radford signed a memorandum for Charles Piez, dated January 5, 1918, which expresses the conclusions reached by them, and appears in Documentary Evidence, p. 258, Exhibits B-28, G-117. This memorandum reads as follows:

> "We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

"We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

"The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions."

Prior to the receipt of this memorandum from Admiral Bowles and Radford, Charles Piez, as vice president and general manager, had received a letter from Powell in anticipation of the final conference with Admiral Bowles. In this letter (Documentary Evidence, p. 256, Exhibit G-116) Powell agreed on behalf of Bethlehem "to accept the order to con-

struct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice president and general manager".

Charles Piez (pp. 877-880) testified in relation to the Memorandum and Powell's letter.

Q. Do you know of your own knowledge what Admiral Bowles did in the way of checking up the proposals submitted by the Bethlehem Company?

A. Bowles reported several times to me while negotiations were going on.

Q. He reported that Bethlehem were reluctant to build tank ships and were only persuaded with the greatest difficulty to build such ships?

A. Yes.

Q. He also reported, did he not, that the prices submitted by Bethlehem, and as finally reduced after a process which has been described by counsel for Bethlehem as a jewing down process, were still too high and unsatisfactory to Messrs. Bowles and Radford?

A. Yes.

Q. And at the time they made that report to you, you had in your possession, had you not, a letter from Mr. Powell in which he states—I am referring to page 257 of the Concession of Documentary Evidence, Exhibit G-116—"We further refer to my conference with the vice-president and general manager of the Emergency Fleet Corporation on Friday the 21st ultimo. This will confirm the statement then made that while this company cannot undertake any capital expenditures at its expense, if the

terms in our proposal do not otherwise meet the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice-president and general manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels." You had that letter in your possession, did you not?

A. Yes, sir.

Q. What did you do with that letter in your possession with respect to the report of Messrs. Bowles and Radford that the prices which Bethlehem insisted on, even as reduced, were still too high?

A. Probably endeavored to get another reduction.

Q. You probably endeavored to get another reduction?

A. That would be the natural thing to do.

Q. Did you do that yourself?

A. I don't recall.

(pp. 864-865):

Q. Subsequently you signed the letters which have been offered in evidence respectively as G-118, G-119, and G-120, and which in the printed documents immediately follow the memorandum of January 5th, awarding these contracts to Bethlehem at the prices named?

A. Yes, sir.

Q. In point of fact, those letters were pre-

pared by Bowles and Radford and submitted to you with their memorandum of January 5th?

A. Yes.

Q. Do you recall whether after the receipt of that memorandum and before releasing the letters which accompanied it, you yourself made a check of any of the base prices that were specified in those letters with the prices at which contracts for the construction of other ships were being let?

A. I did.

Q. How did you make that comparison?

A. I compared the cost of two ships included in this order from the Union Plant with the prices on ships that we bought at the same time from the Moore Ship Building at Alameda. Both were under the same wage scale, as I recall it. The cost of the Moore ships ran about $245 per deadweight ton. The cost of the Bethlehem ships, including the base price plus the fee, plus the participation in savings—the base price plus the fee, which was the maximum cost of these vessels represented to the Government, and found that the price quoted by Bethlehem was about $230 per dead-weight ton against $245. I think there were several other comparisons made.

George S. Radford (pp. 1010-1012):

Q. One other question and that is whether or not you knew at the time of the agreement reached on January 3rd of a letter of that date which Mr. Powell had delivered to Mr. Charles Piez whereby he indicated his willingness to leave the matter of price in the contract to Mr. Piez

in the event that Admiral Bowles and he were unable to reach an agreement?

A. I remember the letter because I was shown the original two or three years ago. I remember it quite clearly. I am very certain that I had not seen that letter until the date which I initialed on the bottom of it, and I am sorry that I don't recall that date, but I would not have written the memorandum which you referred to a short time ago if I had known of the existence of that letter. That is quite unreasonable to think that that would have happened and that probably clears the point for you. Now when I saw the original letter, of course it was one of dozens of letters on the different work at the time, and all I did was that I was quite careful to initial and put the date on any important paper that came before me, and when the original was handed to me two or three years ago I looked for that and found the date was some days afterwards and I think it was about the 11th.

Q. That was about how long after January 5, 1918, that you saw that letter, do you suppose?

A. I think the date I saw it was about the 11th. The original ought to be around here somewhere and you will find on it the stamp and the initials.

Q. Your best recollection, as I understand it, is that that letter came through to you in the ordinary course of routine business?

A. Considerably later.

Q. And probably about January 11, 1918, is your recollection?

A. Yes, sir.

Q. After you did see that letter did you take up with Admiral Bowles or with Mr. Charles Piez a suggestion that the price had been fixed at the base price for these contracts be revised before any start of the work was undertaken?

A. No, sir. I can answer that question in the negative for the reason that it would have been contrary to my own feeling what was a proper policy for the Fleet Corporation. The object of the Fleet Corporation was not to put the Government into shipbuilding as a big shipbuilder but it was to spread out the job and decentralize it as much as possible, and I would have personally objected on the theory of the thing to anything that would say, "Now you go do this way we say you are to do it."

Q. You would have preferred to have taken the chance on recommending something more than might be regarded as giving a reasonable profit in order to get the work going on a large scale by Bethlehem?

A. Well, and to leave us out of the picture as having ordered them how they were to do a thing and under what conditions. We wanted to give them the job of producing certain ships, and the only influence that letter would have had on me would be to cut out the word "arbitrary" in that memorandum. That is one of the things that you dictate in the busy day and it comes back to bite you ten years afterwards.

The form adopted for these contracts was before the Circuit Court of Appeals for the Sixth Circuit in Dayton Airplane Co. v. United States, 21 Fed. (2d) 673, and that Court, in an opinion by Judge

Dennison, not only approved the form of contract as lawful for the Government to enter into, but as desirable because its provisions seemed advantageous to both parties. The opinion contains the following:

> * * * As to the third, the bonus for savings, the complaint is that, although the contract expressly provides therefor, it is to that extent void because against public policy, and that this position is emphasized in the present case by the unconscionable amount of profits resulting to defendant. This provision was common in governmental contracts during the war. Although it is said to have been new in governmental contracts at that time, it had long been common in private building contracts; indeed, it was almost a necessary corollary or incident of a cost-plus contract. Much is to be said both for and against the economic good policy of 'cost-plus' contracts for governmental work; but it is well known that, during the war emergency, they seemed to be necessary, and that they were authorized and employed to a very great extent. To preserve the motive of self-interest on the part of the contractor and yet to neutralize any tendency on his part to increase his percentage by increasing cost, the theory was adopted that the parties should agree upon an estimated price, which would be the probable cost as near as they could foresee, and that then the contractor should be allowed, in addition to his flat percentage, a portion of any savings which he was able to make below the estimated or 'bogey' price. In this case that

bonus was 25 per cent., and, as computed, it amounted to the sum named."

"With regard to plaintiff's claim that this provision was against public policy, it is enough to say that no authorities are cited to that effect, and that, for the courts to undertake, years afterwards, to set aside a wartime contract of the government because against public policy should be and is, in our judgment, quite impossible. Even if the subject were otherwise open, it would be difficult to set aside only one contract provision which formed a part of the consideration for the counter promises."

At the time these contracts were entered into, insofar as the evidence before the Master shows, Piez, Admiral Bowles, Radford and Cox had knowledge, or information available, from which knowledge could have been obtained, whereby to judge of the reasonableness, under all of the circumstances, of the estimated base price for the contract ships.

The Government has not produced a word of testimony to prove that, had the Government representatives known exactly what the profit to Bethlehem under the contracts dated December 31, 1917 eventually would be, the contracts in question would not have been made because they could produce such profit. The Master must assume that, as the burden was upon the Government to prove this to be the fact in its attack upon the profits from the contracts, the failure of the Government to develop such evidence from Piez, Radford, Cox or Cuthell justifies the inference that had the effort been made the testimony would have proved the contrary, and that the Government's witnesses, if asked, would have testi-

fied that regardless of the profit, as the contracts represented the best price obtainable from Bethlehem for the building of the ships, the contracts would have been entered into.

The Government aimed to win the War. Bethlehem was deemed essential to doing so. A failure to induce Bethlehem to undertake the shipbuilding program covered by these contracts, followed by the taking possession by the Fleet Corporation of the Bethlehem plants, could not have accomplished the desired result. It was Bethlehem's organization that was necessary to insure success to the shipbuilding program of the Fleet Corporation and, as the Government did not have power to compel performance by an unwilling organization, if Bethlehem demanded its price on the basis of substantial commercial profits rather than contribute such services on a patriotic basis, the Government was obliged to take the contracts on such basis or not at all.

The evidence shows, and the Master finds, that the Fleet Corporation made the contracts with open eyes, although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its "pound of flesh", and did so because of a realization of the necessity of attaining an objective with the shipbuilding program which, without Bethlehem, might not be possible.

The controversy over the percentage of profits to be derived by Bethlehem for the performance of the contracts under consideration during the wartime period, leading to the charge that such profits were inordinate, unconscionable and therefore unlawful, regards the profits only in relation to the actual cost of the ships. It is to be remembered, however,

that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long-time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes and other carrying charges. All of these, however, were charges incident to the stand-by service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it.

The profits afforded to Bethlehem from these shipbuilding contracts are in large measure to be paid, of course, by Bethlehem's fellow taxpayers who supply the funds, Bethlehem contributing, no doubt, most of its "bonus for savings" as originally anticipated by Powell (pp. 779-784). But, after all, without Bethlehem the World War might have lasted many months longer and the burdens upon these same taxpayers might thereby have been enormously increased.

It is a matter of conscience how much one takes from those needing service in necessity. It is a matter of honor to pay for such service at the contract price, even though, when the necessity be over, the

obligor may regard the weight of his debt unduly burdensome.

POWER OF THE GOVERNMENT TO CANCEL CONTRACTS

It is fair to assume, even without reference to Exhibit B-6, that prior to the Armistice information had been acquired by the Fleet Corporation concerning actual cost of the construction work on the contract ships by reason of the current audits for the Fleet Corporation of the Bethlehem contract work, from which a comparison with the estimated base cost could readily have been made. It was within the power of the Government under the Federal statutes, to cancel the contracts with Bethlehem and thereby deprive Bethlehem of its estimated profit.

See Russell Motor Car Co. v. United States, 261 U. S. 514.

Also De Laval Steam Turbine Co. v. United States, 284 U. S. 61. Mr. Justice Sutherland:

> "Whether the contract taken or cancelled is one with the government or is a private contract, the result of the two cases is that just compensation means the same—'the value of the contract at the time of its cancellation, not what it would have produced by way of profits . . . if it had been fully performed'. Russell Co. v. United States, supra."

This power of cancellation was one of the reasons which induced Radford to accept the estimates in spite of his belief that the speculative chances for profit under the war conditions were more favor-

able to Bethlehem than against it. (Radford, R. 1002.)

The fact that the Government failed to exercise the power of cancellation preserved to Bethlehem its contract rights, and the benefits from the fulfillment of these contracts are what Bethlehem claims.

Is the dual position which Charles M. Schwab held a reason in good morals why Bethlehem should waive part of the claimed profits?

It is asserted by the Fleet Corporation that in good morals Bethlehem should not enjoy the full amount of the profits to be realized from these contracts, because Charles M. Schwab deprived the American Shipbuilding Corporation of somewhat similar profits, reducing them, by the exercise of his power as General Manager of the Fleet Corporation, to a profit of only ten per cent. of actual cost, and that Bethlehem should have been dealt with likewise.

The evidence, which is uncontradicted, shows that Mr. Schwab accepted the position of Director General of the Fleet Corporation at the request of the President of the United States on the condition that he would undertake it only if regulations and stipulations were made, as he stated, "to relieve me of any possibility of doing business with my own concern". This condition was agreed to by the Fleet Corporation, and all dealings which the Fleet Corporation had with Bethlehem were through representatives other than Mr. Schwab. (Documentary evidence, pp. 579-580.)

There is no evidence that the agreement made at the time Mr. Schwab assumed the office of Director General was changed or any responsibility whatever imposed upon him concerning the relations between the Fleet Corporation and Bethlehem.

In addition to the fact that Schwab had no responsibility for Bethlehem's contracts, and that the profits from them were not ascertainable before Schwab severed his relations with the Fleet Corporation, there are facts to show that the position of Bethlehem and the American Shipbuilding Corporation, in so far as the status of their respective contracts, is concerned, was not the same.

The evidence shows that the adjustment arrived at between Schwab and Farr, president of the American Shipbuilding Corporation, was made possible because the limit of a ten per cent. profit was what Farr had agreed to at the time the first contracts were negotiated with Admiral Capps, and that, with this understanding, contracts were executed with the American Shipbuilding Corporation on a lump sum basis rather than cost plus ten per cent., because Farr did not want to subject his company to the audit processes of the Fleet Corporation.

The Master finds as a fact that Charles M. Schwab had no responsibility as a representative of the Fleet Corporation or of the United States of America in relation to the contracts between Bethlehem and the Fleet Corporation, and that there is no evidence to support the charge that the dual relationship of Charles M. Schwab imposes upon Bethlehem, in good morals, the duty to relinquish all profits from these contracts above 10% of the actual cost of the ships.

COMPARISON OF BETHLEHEM'S WAR PROFITS WITH OTHER PROFITS

The major brief for the Government contains the following language (pp. 321-322):

> "It is the position of the Government that Bethlehem is not entitled to retain any sums paid to it on account of 'fixed profits' or 'half-savings', or to receive any further payments on that account in connection with the contracts in controversy.
>
> "Having perpetrated a gross fraud upon the Government in connection with such contracts, it would be unreasonable to hold that notwithstanding such fraud, Bethlehem should receive as compensation the same amount which would afford just compensation to an honest shipbuilder for doing the same work done by it. Any such decision would mean that Bethlehem had everything to gain and nothing to lose, financially, in attempting to defraud the Government and would encourage dishonest contractors to take advantage of the Government under like circumstances.
>
> "No one can say that this country is done with war or how soon a national emergency will again exist calling for the maximum production of every shipyard throughout the United States. At such a time plant requisition will again prove impracticable, there will again be no time for haggling, and the Government will again be obliged to depend upon the integrity and patriotism of the manufacturers with whom it is forced to deal. At such a time there will undoubtedly again be those who will

look upon the national emergency as an opportunity to make enormous profits for their respective companies and themselves at the expense of the Government, and whose patriotism and sense of propriety will not, in themselves, be sufficient to restrain them from taking full advantage of such opportunity.

"What is needed is, in the words of Schwab, an object lesson which will serve to check the cupidity of those who may hereafter have occasion to deal with the Government under conditions similar to those existing at the time of Bethlehem's negotiations with the Fleet Corporation (Ex. G-160, Doc. Ev., p. 493). In its influence upon such dealings, and as a beacon by which such persons may determine the duty of fair dealing owed by them to the Government and be warned of the dangers involved in the violation of such duty, the decision in these proceedings will be of far more importance than the millions now involved."

The Master, as of course, has given due consideration to so serious a charge, and no small part of the time which has elapsed since the second argument before the Master, in which the charge was seriously repeated, has been consumed while the Master has endeavored to ascertain from available sources, whether, if the charge were found to be justified, the remedy proposed by the Government of penalizing Bethlehem to the extent of its contract profits would aid in the elimination of such war profits in the event of future wars.

The Master has examined the records of certain of the Congressional Investigations with judicial

curiosity, in the hope that the reports of one or more of these Congressional Committees might supply for *judicial notice* some of the facts relating to the wartime problems of the Government and the shipbuilders which the parties before the Master failed to produce.

Judicial notice produces information which frequently is helpful and sometimes essential.

> Werk vs. Parker, 231 F. R. 121, 249 U. S. 130;
> Duplex Company vs. Deering, 254 U. S. 443;
> (see pages 474-477);
> Arizona vs. California, 283 U. S. 423.
> (see pages 453-458).

The Master includes herein some of the findings of the Senate Committee on Investigation of Munitions Industry, for such *judicial notice* as the reviewing Courts may care to take of them.

The Master refers to the following:

Special Committee on Investigation of the Munitions Industry Senate Resolution 206 (73d Congress) Report No. 944, Part 2.

> "The apparent alternative of commandeering industry is in fact not an available alternative. If the owners of industry are compensated to their own satisfaction and surrender their enterprises and the benefits of their operating experience to the Government, as in the case of the railroads during the World War, the cost is as great as the cost of meeting industry's demands for its services. On the other hand, if any significant part of industry were to be arbitrarily confiscated against the wishes of the majority of the business community, the

chaotic condition resulting from the great social and political animosity which would be aroused thereby would definitely retard the production which is of paramount necessity for the prosecution of a modern war." (p. 4).

"2. While this incapacity of the Government to take over or to dispense with the function of any industry is the main reason for the expectation that even complete theoretical authority and power will never be invoked, there is another subsidiary reason. The administration of prices and procurement is inevitably put into the hands of people who have been industrially trained and who are sympathetic to private industry's demands." (p. 5)

(Alternative to Suggested Constitutional Amendments.)

"2. The necessity that the governmental price-control agencies must largely rely upon industry for their information as to costs, capacity, production needs, and other fundamental information, and the fact that the personnel of these agencies must be largely made up of men who have been industrially trained and who are sympathetic to private industry's contentions, when added to the critical importance of increasing industrial output in war time, prevent the fixing of prices below such a level of profitability as the bulk of the producers in any industry agree is fair. (See pp. 73 to 83 and pp. 55; and 62-63.)

3. The fact that costs are in the last analysis matters of opinion and are not susceptible

of scientific determination and the gigantic nature of the administrative task involved in enforcing any price provisions opposed by a substantial portion of industry make it impossible to eliminate war profits by price control except to the extent that industry agrees to accept a limitation of its profit-making potentialities. (See pp. 84 to 91 and pp. 92 to 94.)

4. There are large profits and there is inequality in peace time. The strain and stress of war is not conducive to the adoption of fundamental reforms which cannot secure acceptance even in time of peace. We must guard against a blind belief that all profiteering can be ended by proposals for war-time taxes and industrial control.

5. Severe war-time taxation ensures the subjecting of the administrative officials responsible for its operation to heavy direct and indirect pressure for the alleviation of tax burdens, it increases resistance to tax collection, and if it reaches a level which the majority of business men feel is confiscatory, will discourage or prevent the volume of production so essential to the successful prosecution of a major war and thus defeat its own ends. (See pp. 37 to 43 and pp. 10 to 12.)

"(3). Severity of Taxation During World War. Patriotism in the last war was tested in a situation where the highest excess-profits tax rate continued in existence for only 1 year, was 80 percent of profits over and above an exemption of at least 10 percent of investment, which as pointed out above, at page 8, is not a check

on the absolute amount of profits. Mr. Haig, in speaking of the British experience on the subject, indicated that abuses would develop even with a rate far below 80 percent.

Best informed British opinion places the maximum share which can be safely taken by the Government at about 50 percent. If the Government takes more than the half of the pound of profit, abuses, it is believed, are certain to develop." (p. 12)

"VII. Attempts to Limit Profits. The committee finds, under the head of Attempts to Limit Profits, that the failure of the Navy Department to turn the navy yards into effective yardsticks by which the charges of private shipyards could be measured and kept down has resulted in leaving the profits of the shipbuilders practically uncontrolled." (p. 7)

The committee finds that the Vinson-Trammell bill of 1934 limiting profits to 11.1 percent of cost cannot be enforced without a huge police force of accountants and that disputes concerning its interpretation, similar to those which delayed the payment of war-time taxes by the companies for 12 years may confidently be expected. (p. 7)

"Cruiser Awards. (a) Some evidence of the fairness of the prices bid for these cruisers is given by the profits made by the companies on them. Newport News made $5,601,851 or 35 per cent profit over cost on U. S. S. Augusta and U. S. S. Houston (Feb. 14, galley 91 ZO); Bethlehem Ship made $2,200,000 or 25.4 per-

cent profit over cost on U. S. S. Northampton (Feb. 27, galley 26 QD). New York Ship made $2,946,706 or 36.7 percent profit over cost on U. S. S. Chester (Exhibit No. 1540, p.).

Due to changes made by the Navy after the awards were granted, both the cost of the cruisers in the private yards and in the navy yards ran over the original figures, including the changes.

The navy yards completed the ships for less than their estimates excepting for those changes. The Puget Sound Yard was $1,084,267 under its estimate on U. S. S. Louisville. The Mare Island Yard was $182,389 under its estimate on U. S. S. Chicago.

Mr. Homer S. Ferguson, president of Newport News, said:

I was perfectly amazed that we made so much, referring to the cruisers Houston and Augusta (Feb. 14, galley 92 ZO).

Nobody on this committee is more surprised than I am on the profit we made on those ships. I would not believe it because we had not done that before * * *. I think it is rotten business in addition to not being right, so that the amount of profit was a surprise to me for fair.

Mr. S. Wiley Wakeman, manager of Bethlehem Shipbuilding, said:

We figured our profit would be $938,000. It actually turned out to be $2,200,000 (galley 26 QD). We estimated we would make a profit of 10.2 percent and we actually made a profit of

25.4 percent—which surprised us very much, because we expected we were going to be stuck on weight. (Feb. 27, galley 27 QD.)" (p. 20)

Special Committee on Investigation of the Munitions Industry Senate Resolution 206 (73d Congress) Preliminary Report.

"III. Prices Increased with Big Navy—The Committee finds, under the head Prices Increased with Big Navy, that the need of the Navy for many ships in 1933 was the main cause for the increase in prices charged by the private shipbuilders, and that they frankly admitted this, and that the Navy recognized the fact.

Q. They (the shipbuilders) were frank enough to say they were putting up prices because of the great amount of work at the time?

A. (Admiral Robinson). There is no question about that." (p. 4)

The foregoing is interesting in that it shows that, in peace times, the Government contracts produced a greater profit to the shipbuilders than the war time contracts of Bethlehem here complained of. It also shows variations between estimates of ship costs and actual costs similar to those testified to by the witnesses as frequent in the industry. (Pp. 668-669.)

The Contracts were entered into upon a "base cost" intended by Fleet Corporation to produce substantial profits to Bethlehem.

The Master is impressed by the facts shown in Exhibit (B-6). This letter was written by Charles

Piez as Vice-President and General Manager of the Fleet Corporation to the Board of Trustees of the Shipping Board, under date of October 9, 1918, and while it relates to the contracts Nos. 340 and 465 for the building of troopships and these contracts are not involved in the cases before the Master, the letter clearly demonstrates that the representatives of the Fleet Corporation, through means available to them, had, in the Spring of 1918, arrived at a method of fixing the base cost acceptable to the Fleet Corporation. In this letter Piez states the following:

> "In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.
>
> "We discussed this matter with the Board at the time the commitments were made last Spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent."

It is inconceivable, with such information available during the period either prior to or immediately subsequent to February 1, 1918, that if Admiral Bowles and G. S. Radford, or Charles Piez, thought that the base price fixed in the contracts with Bethlehem bearing date of December 31, 1917 and executed February 1, 1918, would result in excessive cost to the Fleet Corporation, when compared

with costs of other shipbuilders, that such contracts would not have been modified or cancelled.

Bethlehem gave fair warning to the Government of its expectation and hope of profits from savings to pay its war taxes.

The letter from Bethlehem to the Fleet Corporation of December 13, 1917, contains the following (Documentary Evidence, p. 202):

> "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on December 6, 1917, by the Navy Department and this Company. *The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess*

Profits taxes as today existing, of Ten Percent (10%) of the present estimated cost of construction."

The Fleet Corporation was then put on notice by Bethlehem of the profit which was hoped for, and the evidence produced by the Government before the Master fails to show to what extent, if any, the hoped for profit may be exceeded.

The average profit to Bethlehem upon these contracts upon the basis of the maximum profits realizable by Bethlehem, appears to be 22.245% of actual cost. It is interesting and helpful to the determination of this issue to find that the average profit upon the same basis from contracts entered into as of later dates (Nos. 226, 230, 299, 300, 301 and 314), appears to be 24.171%.

The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the "base cost" of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they fixed the "base cost" of all of these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances (see G. 134, Doc. 391). The evidence also disclosed that the "educated guess" of Powell and Brown as to the "base cost" for the contracts of December 31, 1917, produced a still less cost to the Government of ships built under these contracts than under the lump sum or cost plus contracts with other shipbuilders.

Bethlehem has been charged with evading the inquiries of the Government during the early years of this controversy concerning its profits and it is urged that this lack of frankness is evidence of knowledge that these profits were unlawfully procured.

Mr. Justice Holmes said in Bullen vs. State of Wisconsin, 240 U. S. 625 (1916), pages 630-631:

> "* * * We do not speak of evasions, because, when the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law."

The Master finds no reason to doubt that the rule to be applied in these cases is that stated by Mr. Justice Butler, in Reading Steel Casting Co. vs. United States, 268 U. S. 186, where, in determining the rights of the parties to a Government contract, he said (p. 188):

> "The contract is to be construed and the rights of the parties are to be determined by the application of the same principles as if the contract were between individuals. Smoot's Case, 15 Wall, 36, 47; Manufacturing Co. v. United States, 17 Wall. 592, 595; United States v. Smith, 94 U. S. 214, 217."

The Government relies upon the case of Burke & James, Inc., v. United States, 63 Court of Claims Reports 36, as authority for its request that the

Master shall find that the contract is unenforceable because it may produce for Bethlehem an unconscionable and grossly excessive profit. The Master has examined the Burke & James case, and is of opinion that the facts upon which the decision of that case was based are so different from the facts appearing in the record before the Master that the rule applied by the Court of Claims is not applicable here.

The rule which has protected the Government so frequently in the enforcement of contracts, favorable to it, is available as a protection against an attempt of the Fleet Corporation, as an agency of the Government, to avoid the consequences of a lawful undertaking:

> Carnegie Steel Co. v. United States, 240 U. S. 156, 164. "The court cannot make a different contract from that which the parties made for themselves."
>
> United States v. Bethlehem Steel Co., 205 U. S. 105, 119. "The question always is, what did the parties intend by the language used? When such intention is ascertained it is ordinarily the duty of the court to carry it out."

The Master, for the reasons stated, finds that the charge against Bethlehem of fraud in the making of the contracts under consideration is without foundation upon this record, and that these contracts are valid, enforceable obligations, according to their terms, against the Fleet Corporation.

DISCUSSION AND CONCLUSIONS UPON THE WAGE SCHEDULES

The amount of the judgment, to which Bethlehem is entitled, is dependent upon the interpretation to be given to the so-called Wage Schedule in the several contracts.

The controversy between the parties to this litigation over the applicable base wage schedule to be applied in ascertaining the estimated base cost for the contract ships arises out of the language used in Article XIX of the several contracts.

The West Coast contracts provided (Article XIX) that "actual cost . . . based upon an estimated actual cost to the contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at said shipyard."

The East Coast Contracts read "actual cost . . . based upon an estimated actual cost to the contractor at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States at (Boston, Brooklyn, Norfolk, or Philadelphia, as the case may be).

The Stipulation of Facts (pp. 4-9, inc.) sets forth the several contentions of the parties in relation to the effect of increased wages upon the estimated base cost of the ships.

The Master has considered the questions in the light of the contentions of the several parties, based upon evidence as to which there is no dispute, and has reached the following conclusions:

As to the West Coast Contracts:

The wage schedule which was adopted by the Federal Adjustment Wage Board and in force in the West Coast shipyards on November 24, 1917, was increased by a war service payment of ten per cent. effective on and after December 15, 1917, in accordance with the terms of the Order of the Wage Adjustment Board of December 8, 1917.

The Documentary Evidence (p. 196, Exhibit B-15, and p. 198, Exhibit B-16) shows that Bethlehem made the said war service bonus effective in its Union shipyard on the West Coast on and after December 15, 1917. It follows, therefore, in the opinion of the Master, that the wage schedule applicable to the West Coast Contracts, as the schedule in effect January 3, 1918, included the ten per cent. war service bonus theretofore made effective in the West Coast Yards.

The Master is of opinion that the applicable wage schedule did not include the straight ten per cent. increase which was to become effective February 1, 1918, in accordance with the order of the Board of December 8, 1917, because not only was this increase not in effect in the West Coast shipyard on January 3, 1918, but there was no order of the Wage Board prior to that date making it unconditionally effective at any time. The order with reference to this increase provided (Documentary Evidence p. 195) "that nothing in this memorandum shall prevent a rehearing of this matter by the Wage Adjustment Board." As to the West Coast Contracts the contention of Bethlehem, in the Stipulation of Facts (p. 7), set forth as Contention C, is the contention approved by the Master and will be made the

basis for the computation of the amount to be awarded to Bethlehem.

As to the East Coast Contracts:

The Government has asserted that because the Federal Adjustment Wage Board had no jurisdiction over Navy Yard rates there was no wage schedule upon which to base the estimate of cost of ships under the East Coast Contracts.

There were, however, wage schedules in effect in the Navy Yards throughout the country, varying with the location of the yard, which had been adopted by the Navy Yard District Wage Boards and, according to the conceded facts, in November and December 1917, the Fleet Corporation authorized Bethlehem to put into effect at each of its four East Coast shipyards on ships under construction for the Fleet Corporation the rates then prevailing at the respective Navy Yards nearest to such shipyard, and on January 3, 1918, Bethlehem actually had, insofar as was practicable, put into effect in each of its East Coast shipyards such rates.

As of January 3, 1918, there were no outstanding orders of the Shipbuilding Labor Adjustment Board or of any other Board having power to fix rates for the Navy Yards which increased Navy Yard rates over and above those actually in effect prior to January 3, 1918. Thereafter, and on various dates, to wit., February 14, 1918, March 1, 1918, April 6, 1918, and October 24, 1918, the Shipbuilding Labor Adjustment Board made awards increasing the rates of wages payable to labor engaged in ship construction in one or more of the East Coast yards of Bethlehem.

The master is of opinion that none of the increases in the rates of wages authorized by orders issued after January 3, 1918, are to be made a part of the wage schedules which go to form the estimated base cost of the ships covered by the East Coast Contracts.

The Master finds, therefore, that the schedule of wages referred to in Article XIX, of each of the so-called East Coast Contracts is the schedule of wages in force on January 3, 1918, at the Navy Yard therein specified, and that Contention D (Stipulation of Facts, p. 8) will control in determining the computation of the amount to be awarded to Bethlehem.

Recommendations.

The Master and Referee recommends that the causes be disposed of as follows:

A. Union Iron Works Company, for the use of Bethlehem Shipbuilding Corporation, Ltd. vs. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, *No.* 11972, *at Law.*

The Master recommends that judgment be entered for the defendant as to the plaintiffs' claim, and for the plaintiffs as to the defendant's counter-claim.

B. Bethlehem Steel Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., vs. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, *No.* 11974, *at Law.*

The Master recommends that judgment be entered for the defendant as to the plaintiff's claim, and for the plaintiffs as to the defendant's counter-claim.

C. Fore River Shipbuilding Corporation; Bethlehem Shipbuilding Corporation, Ltd., vs. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, *No.* 11976, *at Law.*

The Master recommends that judgment be entered for the defendant as to the plaintiff's claim, and for the plaintiffs as to the defendant's ~~counter-claim~~.

D. The United States of America, Complainant, vs. Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd.; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company, Defendant, March Sessions 1923, *No.* 3315, *In Equity.*

The Master recommends that a decree be entered dismissing the Bill in Equity filed by the United States of America.

The dismissal of the Bill in Equity carries with it a decree dismissing the counter-claim filed by Bethlehem against the United States, for the reasons which have caused the Master to refuse Request No. 5 filed by Bethlehem for conclusions of law.

The United States having instituted this cause in the United States District Court for the Eastern District of Pennsylvania thereby concedes jurisdiction to this Court to entertain a counter-claim by Bethlehem as a set-off against the claim of the United States. As to such counter-claim, if found valid, this Court might set-off the amount thereof in reduction of any amount to which the United States were found entitled by a favorable decree. There is no authority, however, for the contention by Bethlehem that an affirmative judgment may be entered by this Court, in the Equity proceedings, in its

favor against the United States. The authorities are to the contrary, and the Master finds that this Court is without jurisdiction to award to Bethlehem the amount of its counter-claim in the sum of $8,839,820.80, with interest thereon, or any part thereof, because such claim exceeds the sum of $10,000, which determines the jurisdiction: United States v. Skinner & Eddy Corp'n, 35 Fed. (2d) 889; United States v. Turner, 47 Fed. (2d) 86; United States v. Pfitsch, 256 U. S. 547; See Note p. 553 Nassau Smelting Works v. United States, 266 U. S. 101.

E. Bethlehem Shipbuilding Corporation, Ltd., vs. The United States Shipping Board Emergency Fleet Corporation. December Sessions 1925, *No.* 11970, *at Law.*

The Master recommends that judgment be entered in favor of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and against the defendant, The United States Shipping Board Emergency Fleet Corporation, upon the following basis:

Upon the facts and the law found applicable thereto, the Master finds that Bethlehem is entitled to an award of the following:

Amount due on direct contracts—completed vessels—based on Wage Schedules set forth as Contentions C and D	$4,871,375.12
Amount due on direct contracts—uncompleted vessels	509,206.86
Total	$5,380,581.98
With interest from September 1, 1922, at the rate recommended by the Master,	

Plus Miscellaneous:		
1. Reconditioning Penna. R. R. Co. property at Wilmington	2,570.00	
2. Perley Morse deduction	90,019.55	92,589.55
With interest on Item 1 from June 1, 1920, and on Item 2 from Feb. 1, 1921, at the rate recommended by the Master.		
From the aggregate of the above items there should be deducted the Items conceded to the Government and Fleet Corporation as follows:		
1. Material sold to shipbuilder	23,013.96	
2. Surplus steel used by Shipbuilder	6,400.00	
3. Carfare and idle plant at Sparrow's Point	11,847.39	
4. Interest on advance payments	132,770.91	
5. Miscellaneous accounts receivable (50%)	27,064.17	201,096.43
With interest from April 17, 1925 at the rate recommended by the Master.		

The allowance of interest, where money, found by judicial proceedings to be due, has been unjustifiably withheld by the debtor from the creditor, is in the

nature of damages for such withholding. The measure of such damage is to be fixed by the tribunal awarding the judgment. Usually the legal rate of interest in the State of the forum is accepted as a fair measure to be applied. In many cases this measure, if applied, would produce an unfair result, and some other basis should be adopted. Frequently the rate of interest allowed is that which the debtor has earned with the moneys so withheld, but sometimes it is the amount, up to the legal rate, which the creditor could have earned had payment been received when due, or in other instances what the creditor has been obliged to pay for moneys temporarily secured to replace such unpaid debt.

In suits against the United States, interest is not allowable except when expressly provided for by contract or statute.

U. S. vs. Sherman, 98 U. S. 565;
Angarica vs. Bayard, 127 U. S. 251;
U. S. vs. North American Co., 253 U. S. 330.

There is no contract or statutory provision which would permit the allowance of interest upon the counter-claim set up by Bethlehem in the equity proceedings instituted by the United States in this District, if it should be found that the District Court of the United States for the Eastern District of Pennsylvania had jurisdiction to entertain the claim.

U. S. vs. Verdier, 164 U. S. 213.

In the suit of Bethlehem against the Fleet Corporation, while the latter is the nominal defendant, and liable for its contract obligations, the facts in this case show that the real defendant, ultimately to be called upon to pay whatever judgment, if any, may

be entered in favor of Bethlehem, is the United States. In the suit at law, it would seem that interest would be allowable to Bethlehem in any judgment obtained against the Fleet Corporation, even though ultimately such interest must be paid by the United States, and regardless of the fact that on the equity side of the Court, were Bethlehem to be awarded a judgment upon its counter-claim against the United States, no interest would be collectible.

The legal rate of interest in this District is 6% per annum, but under all the circumstances attending these cases, and in view of the further fact that during a substantial part of the time since payment became due, the going rate of interest has been substantially less than 6%, the Master has concluded that an allowance of interest to be computed at the rate of 6% per annum would not be justified.

The Master recommends that interest be allowed upon the several items from the due date for the payment thereof, as herein set forth, computed at the average of the rates allowable on deposits by member banks of the Clearing House Association of New York and Philadelphia, since the said due rates, under the Rules of these associations controlling interest rates.

During such periods, if any, when rates were not fixed by such Rules, the rate of interest to be applied shall be that fixed by the Rules next thereafter made effective. If the parties can agree upon what the average rate has been, the Master will receive a statement thereof and add it to his Report. If the parties cannot agree, then the Master will determine by other means what such rate has been and add this finding to his Report as the basis for his recom-

mendation of the allowance of interest in such judgment as the Court may enter.

The total to be computed, in accordance with the foregoing, will be the amount for which the Master recommends that judgment be entered in favor of Bethlehem Shipbuilding Corporation, Limited, upon the approval of this Report by the United States District Court for the Eastern District of Pennsylvania.

WM. CLARKE MASON,
Special Master and Referee.

December 19, 1935.

SUPPLEMENT TO THE REPORT OF THE SPECIAL MASTER AND REFEREE.

The Master gave due notice to counsel of record for the parties to the above entitled cause of the preparation of his proposed Report, and served copies thereof upon counsel as of December 19, 1935, with notice that the Report would be filed, in the United States District Court for the Eastern District of Pennsylvania, unless exceptions thereto were filed within thirty days.

Exceptions were filed on behalf of the United States of America and the United States Shipping Board Emergency Fleet Corporation, and exceptions were also filed on behalf of Bethlehem Shipbuilding Corporation, Ltd., all of which exceptions are set forth in full in the appendix hereto.

The Master received due notice that the parties to these causes could not agree as to what was the average rate of interest to be determined in accord-

ance with the method proposed by the Master in his proposed Report. The Master, therefore, has ascertained from available records of the Clearing House Associations of New York and Philadelphia information as to the rates of interest which were allowable on deposits by member banks of the said Associations under the rules of these Associations controlling interest rates during the periods for which interest may be allowed upon the amounts to be awarded in favor of Bethlehem, and finds that such average rate of interest so ascertainable is approximately two per cent. The Master therefore recommends an allowance of interest in such judgment as the Court may enter in favor of Bethlehem, at the rate of two per cent. per annum upon the amounts and for the periods set forth in this Report (pages 42-43).

The Master has given consideration to the one hundred and thirty-four exceptions filed to the proposed Report of the Master on behalf of the United States of America and the United States Shipping Board Emergency Fleet Corporation, and has also given consideration to the nineteen exceptions filed to the proposed Report of the Master on behalf of Bethlehem Shipbuilding Corporation, Ltd.

These exceptions show the extent to which facts and inferences from facts are viewed differently by different minds. While the Master regards with respect the knowledge of the details of these cases by the respective counsel for the several parties, and also their sincere belief in the cause which they represent, the Master has found no sufficient reason in the exceptions filed to his proposed Report to induce him to change the findings and conclusions ex-

pressed therein. However, as to Exception No. 25 filed by Bethlehem, some comment seems to the Master to be due at this time:

The Request No. 25 reads as follows:

> "With the exception of the 5,100 ton cargo boats built under Contract No. 314, the average cost to the Fleet Corporation of the cargo and tank vessels of each type and size built by Bethlehem under the contracts in suit, including the fixed fee and half-savings, is less than the average price paid by the Fleet Corporation to other shipbuilders under both lump sum and cost plus contracts for vessels of substantially similar type and size constructed during approximately the same period. (Brown, pp. 378-379, 402.)"

The evidence before the Master shows that, without considering the 5100 ton cargo boats, as to the vessels built by Bethlehem under the contracts in suit, substantially all of them, were built under specifications providing for some more expensive items than the vessels of substantially similar type and size constructed during approximately the same period by other shipbuilders under lump-sum and cost-plus contracts. The result of difference in specifications increased the aggregate cost, according to the testimony of witness Brown, by the sum of at least $880,000. The testimony in the record justifies the conclusion that with or without adjustment, to reflect the difference in specifications, the cost to the Government of the vessels built under the Bethlehem contracts was less, for the value received, than the cost under contracts with other shipbuilders. (According to Brown this difference is $8,800,000, (R. pp. 405-406)) The requested finding No.

25, however, fails to reflect the required adjustment in specifications to create the basis for the comparison, called for by the words of the request, between the vessels of substantially similar type and size constructed by Bethlehem and the other shipbuilders. If such qualification were to be found in the language of the request, the request should be affirmed. The Master has substantially so found in his general findings.

The Master now dismisses each and every of the exceptions filed by the United States of America and the United States Shipping Board Emergency Fleet Corporation to the Report of the Special Master and Referee, and the Master now dismisses each and every of the nineteen exceptions filed by Bethlehem Shipbuilding Corporation, Ltd. to the Report of the Special Master and Referee.

The Master files this his Report to the United States District Court for the Eastern District of Pennsylvania in respect of the above entitled causes, heretofore referred to him by this Honorable Court.

Respectfully submitted,

WM. CLARKE MASON,
Special Master and Referee.

February 7, 1936.

EXHIBIT A.

AMOUNT OF CLAIMS OF THE GOVERNMENT AND OF BETHLEHEM.

The parties have stipulated that if the Government were entitled to the full amount of its claim,

representing overpayments made to Bethlehem without allowing any profits to Bethlehem, the amount thereof would be $19,654,856.32, with interest from September 1, 1922 to date of final judgment.

The parties on the other hand, have stipulated however, that if Bethlehem were entitled to the full amount of its claim, giving effect to the several contentions as to the Wage Schedule, the amount thereof would be as follows:

	Amount
DIRECT CONTRACTS—COMPLETED VESSELS	
1. On Bethlehem's contention (a) and (d)	$5,286,583.20
2. On Bethlehem's contention (c) and (d)	4,871,375.12*
3. On Fleet Corporation contention (b) and (e)	375,112.18*
4. On Fleet Corporation's contention (b) and (f)	1,546,726.30*
DIRECT CONTRACTS—UNCOMPLETED VESSELS	
1. As agreed between the parties	509,206.86*
MISCELLANEOUS	
1. Reconditioning Penna. R. R. Property at Wilmington	2,576.00**
2. Perley Morse deduction	90,019.55***
LESS ITEMS CONCEDED TO GOVERNMENT AND FLEET CORPORATION	
1. Material sold to Shipbuilder $23,013.96	
2. Surplus steel used by Shipbuilders 6,400.00	
3. Carfare and Idle	

Plain at Sparrow's Point.	11,847.39	
4. Interest on advance payments	132,770.91	
5. Miscellaneous accounts receivable (30%)	27,064.17	201.096.43****

NOTE.

* Interest from Sept. 1, 1922
** Interest from June 1, 1920
*** Interest from Feby. 1, 1921
**** Interest from April 17, 1925

EXHIBIT B. (Copy of Computation prepared by Fleet Corporation).

UNITED STATES v. BETHLEHEM SHIPBUILDING CORPORATION, ET AL.

STATEMENTS SHOWING THE PERCENTAGES OF BETHLEHEM'S CLAIMED PROFITS TO THE ACTUAL COSTS ELIMINATING INCREASED WAGES AND CHANGES AND EXTRAS (GROUP A) AND TO THE ACTUAL COSTS INCLUDING THOSE ITEMS (GROUP B)

	Contract Number	Actual Base Cost Exhibit "B 32"	Excess in Estimate termed "Savings"	Bethlehem's Claim to ½ of "Savings"	Fixed Fee	Total ½ "Savings" plus Fixed Fee	Percentage of "Savings" plus Fixed Fee to Actual Base Cost
Group "A"	177	$ 19,957,425.33	5,482,574.67	2,741,287.33	2,520,000.00	5,261,287.33	26.36
	178	8,336,945.15	549,054.85	274,527.42	855,000.00	1,129,527.42	13.55
	179	4,676,780.69	1,533,219.31	766,609.65	600,000.00	1,366,609.65	29.22
	183	4,527,029.93	1,067,970.07	533,985.03	555,000.00	1,088,985.03	24.06
	184	4,566,482.44	1,293,517.56	646,758.78	670,000.00	1,316,758.78	28.84
	191	5,823,323.77	2,690,676.23	1,345,338.11	851,400.00	2,196,738.11	37.72
	196	985,523.24	309,476.76	154,738.38	129,500.00	284,238.38	28.84
	226	8,797,878.20	3,087,121.80	1,543,560.90	1,175,000.00	2,718,560.90	30.90
	230	2,862,459.88	1,287,540.12	643,770.06	415,000.00	1,058,770.06	36.99
	299	4,226,839.69	1,323,160.31	661,580.15	555,000.00	1,216,580.15	28.78
	300	4,181,637.20	1,818,362.80	909,181.40	600,000.00	1,509,181.40	36.09
	301	13,870,527.20	4,954,472.80	2,477,236.40	1,882,500.00	4,539,736.40	31.43
	314	10,177,668.19	1,362,331.81	681,165.91	1,154,000.00	1,835,165.91	18.03
		$ 92,990,520.91	26,759,479.09	13,379,739.52	11,962,400.00	25,342,139.52	27.25

	Contract Number	Actual Cost	Excess in Estimate termed "Savings"	Bethlehem's Claim to ½ of "Savings"	Fixed Fee	Total ½ "Savings" plus Fixed Fee	Percentage of "Savings" plus Fixed Fee to Actual Cost
Group "B"	177	$ 23,466,351.20	5,482,574.67	2,741,287.33	2,520,000.00	6,261,287.33	23.42
	178	9,891,540.18	549,054.85	274,527.42	855,000.00	1,129,527.42	11.42
	179	5,556,330.41	1,533,219.31	766,609.65	600,000.00	1,366,609.65	24.60
	183	5,310,843.57	1,067,970.07	533,985.03	555,000.00	1,088,985.03	20.50
	184	6,140,519.13	1,293,517.56	646,758.78	670,000.00	1,316,758.78	21.44
	191	6,349,258.11	2,690,676.23	1,345,338.11	851,400.00	2,196,738.11	34.60
	196	1,123,782.08	309,476.76	154,738.38	129,500.00	284,238.38	25.29
	226	10,904,547.82	3,087,121.80	1,543,560.90	1,175,000.00	2,718,560.90	24.93
	230	3,218,669.91	1,287,540.12	643,770.06	415,000.00	1,058,770.06	32.89
	299	4,870,124.27	1,323,160.31	661,580.15	555,000.00	1,216,580.15	24.98
	300	5,125,053.23	1818,362.80	909,181.40	600,000.00	1,509,181.40	29.45
	301	15,344,832.08	4,954,472.80	2,477,236.40	1,882,500.00	4,359,736.40	28.41
	314	13,070,101.09	1,362,331.81	681,165.91	1,154,000.00	1,835,165.91	14.04
		$109,371,953.06	26,759,479.09	13,379,739.52	11,962,400.00	25,342,139.52	23.17

REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED UPON BEHALF OF THE UNITED STATES OF AMERICA AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

FINDINGS OF FACT.

1. Bethlehem Shipbuilding Corporation, Ltd., hereafter referred to as "Bethlehem," represents a consolidation, effected at or about the time of its organization in October, 1917, of five shipbuilding companies which had theretofore been subsidiaries of the Bethlehem Steel Corporation (R., p. 12).

Affirmed.

2. Since the organization of Bethlehem all of its stock has been owned by the Bethlehem Steel Corporation (R., p. 12).

Affirmed.

3. The names of Bethlehem's five subsidiary shipbuilding companies and the names and locations of their respective plants are as follows (R., p. 13):

Name	*Plant*	*Location*
Union Iron Works Co.	Union	San Francisco, Calif.
Harlan & Hollingsworth Corp.	Harlan	Wilmington, Del.

Name	*Plant*	*Location*
Samuel L. Moore & Sons Corp.	Moore	Elizabethport, N. J.
Fore River Shipbuilding Co.	Fore River	Fore River, Quincy, Mass.
Penn-Mary Steel Co.	Sparrows Point	Sparrows Point, Md.

Affirmed.

4. Each of the foregoing subsidiary companies at the time of said consolidation was an "old line," experienced shipbuilding company, employing a large, efficient and well equipped organization engaged in the business of building steel ships (R., pp. 13-4; Bill, par. 20).

Affirmed.

5. As a result of said consolidation, Bethlehem took over the operations of all five plants and became the largest shipbuilding concern in the world, both with respect to number of shipways and number of employees (R., pp. 13-4).

Affirmed.

6. During the summer of 1917 an extraordinary emergency of war existed and rendered it necessary for the United States to control the entire shipbuilding, steel, coal, transportation, and other industries of the United States, and to requisition all ships suitable for war purposes then under construction at the various shipyards throughout the United States, and to enter into contracts with ship-

builders for the construction of as many additional vessels as it was possible for each shipbuilder to construct, and to have the same constructed in the least possible period of time (Bill, par. 22).

Affirmed.

7. The conditions and emergency described in the preceding request No. 6 were well known to the public in general and to Bethlehem and its representatives (Bill, par. 22).

Affirmed.

8. On August 3, 1917, the Fleet Corporation, acting upon behalf of the United States, requisitioned all merchant ships over 2,500 deadweight tons, then under construction in all shipyards throughout the United States, including those of the aforesaid five companies which were then subsidiaries of the Bethlehem Steel Corporation (Bill, par. 15).

Affirmed.

9. In the negotiations relating to the contracts in controversy, copies of which appear as Exhibit C, Bethlehem was represented by Joseph W. Powell and Harry Brown (R., p. 16).

Affirmed.

10. Powell became president of the Fore River Shipbuilding Corporation in 1914 and remained as such until he left the employment of Bethlehem in December, 1920 (R., pp. 643, 636-7). Upon the organization of Bethlehem, he became its vice-president and operating manager in charge of all its ac-

tivities, including the negotiation and execution of shipbuilding contracts (R., pp. 17, 643).

Affirmed.

11. From 1903 until Bethlehem's organization, Brown was employed by the Fore River Shipbuilding Corporation and during said period was in general charge of all technical work (R., p. 18). Upon the organization of Bethlehem, Brown became its technical manager, his duties including supervision of cost estimating for all its shipyards, and continued to occupy this position until 1922 when his employment by Bethlehem was temporarily terminated (R., pp. 18-9, 24). During October, 1924, Brown was re-employed by Bethlehem and since that date has remained in its employment for the sole purpose of assisting it in connection with the present litigation (R., p. 91).

Affirmed.

12. At the time of the negotiations relating to the contracts in controversy Powell and Brown were recognized as being two of the ablest and most experienced shipbuilders and estimators of shipbuilding costs in the United States (Roberts' Record, p. 162; R., p. 18).

Affirmed.

13. In the negotiations relating to the contracts in controversy, the Fleet Corporation was represented by Charles Piez, Admiral F. T. Bowles and G. S. Radford (R., p. 876).

Affirmed. These representatives were advised by Daniel H. Cox, technical expert and Chester Cuthill, counsel for Fleet Corporation.

14. Piez had joined the Fleet Corporation as vice-president during November, 1917 and became its general manager on or about December 17, 1917 (R., p. 876).

Affirmed.

15. At the time of the negotiations relating to the contracts in controversy, Piez had complete executive charge of the affairs of the Fleet Corporation, with power to negotiate and execute all contracts upon its behalf, including the contracts in controversy (R., pp. 850-1, 876, 15).

Affirmed.

16. At the time of such negotiations Bowles was manager of the division of steel ship construction of the Fleet Corporation, and Radford was manager of its contract division (R., pp. 979, 983).

Affirmed.

17. Neither Bowles nor Radford had authority to make or execute shipbuilding contracts upon behalf of the Fleet Corporation (R., pp. 850-1, 876).

Affirmed.

18. Bowles died some time prior to the previous hearing before Justice Roberts in May, 1929, (R., p. 14).

Affirmed.

19. At the time of the negotiations resulting in the contracts in controversy, it was understood by all parties concerned that the Fleet Corporation shipbuilding program would call for capacity production at each of Bethlehem's shipyards, and that insofar as tank and cargo ships were concerned,

Bethlehem would be permitted to build ships which were duplicates or substantially similar to ships previously constructed at such shipyards; in order to facilitate and expedite construction (R., pp. 30, 32, 269, 323-4, 885; Ex. G-104, Doc. Ev., pp. 201-3; Roberts' Record, pp. 275, 645-6).

Affirmed.

20. As a result of a conference which took place on December 12, 1917, between Powell, Brown and representatives of the Fleet Corporation, Powell and Brown (R., p. 75) prepared and submitted to the Fleet Corporation a "Proposal Covering Supply of Additional Tonnage," dated December 13, 1917, which stated, *inter alia* (Ex. G-104, Doc. Ev., p. 201):

> "Referring to conference on December 12th, 1917, between representatives of the Emergency Fleet Corporation and of this Corporation, the following proposal is submitted for the construction of additional vessels at the various shipbuilding plants of the Bethlehem Shipbuilding Corporation, Ltd. * * *
>
> "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a

fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on December 6th, 1917, by the Navy Department and this Company. The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as today existing, of Ten Per cent (10%) of the present estimated cost of construction.

"In the following proposals, it is the intention to supply so far as possible, duplicates of vessels already constructed at the various Plants, rather than to adopt the so-called standard vessels of the Emergency Fleet Corporation or vessels actually built at other yards. This offers the obvious advantage of giving to each plant a class of work with which it is familiar from actual experience and for which all plans, order sheets and very often Mould Loft work is immediately available. The adaptation of plans from one Yard to another requires at best considerable work by the Draughting Room and this Company is experiencing at this time a serious shortage of this class of labor. It further necessitates the maximum amount of Mould Loft work, and here again at nearly all of its

Yards the total output is dependent on the capacity of the Mould Loft to supply the necessary information to the Shipyard. * * *

"This Company has contracts with the Midvale Steel & Ordnance Company, dated March 29th, 1917, and the Central Iron & Steel Company, dated March 19th, 1917, for a total of 6,850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at Six Cents (6¢) per pound for the steel plates and Fifteen Cents (15¢) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant Vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely Six Cents (6¢) for Steel Plates and Fifteen Cents (15¢) per pound for Boiler Steel. * * *

"Until the Emergency Fleet Corporation has settled on the types and sizes of vessels that it may desire to order from us for construction at the above Plants, no definite proposals as to fees per ton and estimated costs are submitted. * * *

"It is requested that the proposals in this letter be considered immediately and that representatives of this Company be called in conference, with a view to settling the Emergency

Fleet Corporation's requirements for vessels from its Yards, at the earliest practicable date."

Affirmed.

21. Copies of the destroyer contracts of December 6, 1917, referred to in Bethlehem's proposal of December 13, 1917, appear as Exhibits G-157, G-158.

Affirmed.

22. Following a conference between Powell, Brown and representatives of the Fleet Corporation which took place in Washington on the afternoon of December 18, 1917, Bowles addressed the following letter to Bethlehem at South Bethlehem, Pennsylvania (Ex. G-110, Doc. Ev., p. 229):

"December 19, 1917

Bethlehem Shipbuilding Corporation,
South Bethlehem, Penna.

Gentlemen:

Proposal covering Supply of Additional Tonnage

In reply to your letter of the 13th instant, and in accordance with our conference of yesterday afternoon with your Messrs. Powell and Brown, it is requested that you submit proposals for the following program:

(a) 5-10,000 ton tankers, to be built at your Union Plant;

(b) 2-10,000 ton Union tankers, and 2-10,000 ton troop ships, to be built at your Sparrows Point Plant;

(c) 3 cargo vessels, and 1 tanker of about 7500 tons, to be built at your Harlan Plant;

(d) Such number of sea-going tugs as you believe can be promptly constructed at the Moore Plant;

(e) 3-9,100 ton tankers, to be constructed at the Fore River Plant.

All of the above vessels are to be coal burners, except the tankers and troop ships, which will be oil burners, and all are to be fitted with Scotch boilers except the troop ships.

Plans and specifications of all vessels, that you are proposing to build from your own plans and specifications, must be submitted for approval.

Very truly yours,

F. T. Bowles,
General Manager.

F. T. B.
Rd.
GSR:EMS"

Affirmed.

23. On December 20, 1917 (R., pp. 732, 744), Powell handed to Piez and Radford a "proposal Covering Supply of Additional Tonnage," dated December 19, 1917, reading, in part, as follows (Ex. G-109, Doc. Ev., p. 224):

"On Tuesday, December 18th, 1917, in conference with the Vice-President of the Emergency Fleet Corporation and his representatives, the Bethlehem Shipbuilding Corporation,

Ltd., was instructed to submit a proposal, in accordance with the terms of its letter of the 13th instant, for vessels to be built at its various yards, as follows:

"THE UNION PLANT:

"Five (5) tank vessels of about 10,100 tons d. w., 2600 H. P., 11 knots reciprocating engines, oil-burning Scotch boilers in general duplicates of Hull No. 140 commandeered by the Emergency Fleet Corporation on August 3, 1917. Vessels to be complete with armed guard equipment and war zone requirements in force at this date.

"SPARROW'S POINT PLANT:

"Three (3) tank vessels of about 10,100 tons d. w., duplicates of those above described to be built at the Union plant.

"And two (2) troop ships, in general in accordance with the Emergency Fleet Corporation's design and specifications.

"HARLAN PLANT:

"Three (3) tank vessels of about 7500 tons d. w. (including two vessels to be built instead of two Savannah Lines ships, contracts for which have been cancelled by the Emergency Fleet Corporation), 11 knots, reciprocating engines, oil-burning Scotch boilers, in general duplicates of Hull No. 440, built for the Pan-American Petroleum & Transport Co., complete with armed guard equipment and war zone requirements in force at this date.

"And three (3) cargo vessels of about 7400 tons, 11 knots, 2500 H. P., reciprocating engine, coal-burning Scotch boilers, in general duplicates of Hull No. 169 building at the Sparrow's Point Plant and commandeered by the Emergency Fleet Corporation on August 3rd, 1917, complete with armed guard equipment and war zone requirements in force at this date.

"MOORE PLANT:

"Twenty (20) sea-going tugs, of about 150 ft. in length, in general accordance with the Emergency Fleet Corporation's design and specifications.

"FORE RIVER PLANT:

"Three (3) tank vessels of about 9100 tons d. w., 11 knots, reciprocating engines, in general duplicates of Hulls 268 and 269 commandeered by the Emergency Fleet Corporation on August 3, 1917, last complete with armed guard equipment and war zone requirements in force at this date. * * *

"This company's letter of December 13th proposed to construct such vessels as may be ordered by the Emergency Fleet Corporation for actual cost plus a fee, with an agreed-upon base cost, this company to be paid, in addition to the fee, one-half of any saving that may be made below this base cost, and with a further provision that the said base cost will be increased, due to any increase of rate in wages that may be paid by the order of the Emergency Fleet Corporation. This would not apply in the

case of the troop ships, as it is impossible to make an approximate estimate of their cost, and it is, therefore, proposed that, if these vessels must be built at the Sparrow's Point Plant, they shall be constructed on a straight cost and percentage basis.

"The fixed fees and estimated costs of the various vessels are as follows:

	Fee each vessel	*Estimated Cost, exclusive of fee*
10,100-ton tank vessel	$240,000	$2,181,600
9,100-ton " "	220,000	1,983,800
7,500-ton " "	175,000	1,680,000
Troop ship	15% of cost	
7,400-ton cargo vessel	150,000	1,450,000
Sea-going tugs	35,000	300,000

"As stated in this company's letter of the 13th instant, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction but, based upon a close study of the facts affecting cost, and the knowledge of increase therein in the last two years, and making allowances as seem reasonable to cover the next eighteen (18) months, the period of construction of these vessels—the estimates for the 10,000-ton tank vessels and the 7400-ton cargo vessels are as follows:

	10,000-*ton tank vessel per d. w. ton*	7,400-*ton-cargo vessel per d. w. ton*
Labor, materials and operating expense	$187.50	$168.50
Administrative, selling & general expense	18.75	16.85
Extra cost of steel, as per page 6, letter of December 13th, averaged over all extra tonnage	2.50	2.50
Cost of armed guard equipment and war zone requirements	7.00	8.00
	$215.75	$195.85
Say	$216.	$196.

"The figures quoted above for the smaller tank vessels are based upon those given for the 10,000-ton vessel. Average costs have been used between East and West Coast construction to cover the 10% difference in labor costs and the 5% additional material cost for vessels built on the West Coast as compared with those in the East Coast yards.

"Representatives of this company will call on the Emergency Fleet Corporation to personally consider the subject-matter of this letter, with a view to the earliest determination as to the work which it may be desired to undertake, and, it is needless to add, such orders as are given it

will receive its best efforts, with a view to their completion at the earliest date consistent with obligations already assumed for the United States Navy and for the Emergency Fleet Corporation."

Affirmed.

24. On the morning of January 3, 1918 (R., pp. 686, 748), before any views had been expressed by the Fleet Corporation concerning the estimates submitted in Bethlehem's proposal dated December 19, 1917, Powell handed Piez a letter, dated January 3, 1918, reading as follows (Ex. G-116, Doc. Ev., p. 256):

"January 3rd, 1918

"Mr. Charles Piez,
Vice President and General Manager,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sir:

"Referring to this company's letter of the 19th ultimo, submitting a proposal covering the supply of additional tonnage, further study of this situation at the Union Plant, San Francisco, California, has showed that it will be practicable to undertake the construction of ten (10) tank vessels instead of five (5), or of six (6) additional 11,800 ton deadweight cargo vessels, a total of twelve (12) instead of six (6) of all of these vessels to be delivered prior to July 1, 1919. This would entail the construction of additional ways and a total additional capital expenditure of about $500,000 to be financed by

the Emergency Fleet Corporation as proposed in our letter of the 13th ultimo.

We further refer to my conference with the Vice President and General Manager of the Emergency Fleet Corporation on Friday, the 21st ultimo. This will confirm the statement then made that while this company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels.

Yours very truly,

Bethlehem Shipbuilding
Corporation, Ltd.,

By J. W. Powell,
Vice President."

25. Upon receipt of Powell's letter of January 3, 1918, Piez arranged a conference between Powell, Brown, Bowles and Radford which took place on the afternoon of that date and lasted about five hours (R., pp. 688, 748-9, 700).

Affirmed.

26. Neither Bowles nor Radford was advised either prior to or during this conference as to the foregoing offers which had been made by Powell to Piez on December 21, 1917, and January 3, 1918 (R., pp. 752-4, 1010-11, 878-9, 889; Ex. G-117, Doc. Ev., 258).

Affirmed.

27. The conference of January 3, 1918, related to the following tankers and cargo ships which had previously been referred to in Bethlehem's proposals, and which were subsequently included in the following contracts, dated December 31, 1917, and were to be built at the following respective shipyards (R., pp. 630-4):

Type	*Number*	*Approximate dead-weight tonnage*	*Plant*	*Contract Numbers*
Tank	15	10,100	Union (12)	177
			Sparrow's Point (3)	179
Tank	3	9,100	Fore River	183
Tank	3	7,500	Harlan	178
Cargo	4	7,400	Harlan (3)	178
			Sparrow's Point (1)	196
Cargo	4	11,800	Union	191

Affirmed. These contracts were executed February 1, 1918.

28. Bethlehem's subsequent proposals and the correspondence (Exs. G-122, -125, -126, -127, -128, -130, -132, -133, -134, -135), resulting in the later

contracts in controversy (Ex. C), related to duplicates of the ships covered by the first series of contracts dated December 31, 1917, with the exception of seven cargo ships of approximately 5,100 deadweight tons to be built at its Harlan shipyard.

Affirmed.

29. The total number of tank and cargo ships of each type covered by all of the contracts in controversy, and the respective plants where such ships were to be constructed, are as follows (R., pp. 630-4):

Type	*Number*	*Approximate D. W. T.*	*Plant*	*Contract Numbers*
Tank	28	10,000	Union (18)	177
				301
			Sparrow's Point (10)	179
				226
				300
Tank	6	9,100	Fore River	183
				299
Tank	6	7,500	Harlan	178
				314
Cargo	12	11,800	Union	191
				230
				301
Cargo	7	7,400	Harlan (3)	178
			Sparrow's Point (4)	196
				226
Cargo	7	5,100	Harlan	314

Affirmed.

30. All of the tank and cargo ships referred to in the contracts in controversy, with the exception of the seven cargo ships of approximately 5,100 deadweight tons to be built at Harlan, represented Bethlehem's standard types of ships, being duplicates of or substantially similar to ships previously constructed at its various shipyards, as well as ships there under construction at the time of the negotiations relating to such contracts (R., pp. 323-4. See Govt. Brief, Appendix, pp. 1a to 18a).

Affirmed.

31. The twenty-eight tankers of approximately 10,100 deadweight tons covered by Bethlehem's proposals and the contracts in controversy were substantially duplicates of Hulls Nos. 140, 141 and 130, which had been completed at its Union Plant, on October 6, June 7 and February 7, 1917, respectively (Exs. G109, 104, 6; Doc. Ev., pp. 207, 224, 578, R., pp. 578-9).

Affirmed.

32. At the time of the negotiations relating to the first series of the contracts in controversy dated December 31, 1917, the following tankers of the following approximate deadweight tonnages were under construction at the Union Plant and were actually completed on the following dates (Ex. G59, Doc. Ev., pp. 37, 42; Ex. G3):

Hull Number	*Approximate Deadweight Tonnage*	*Date of Completion*
143	10,117	Jan. 9, 1918
144	10,117	Mch 1, 1918

Hull Number	Approximate Deadweight Tonnage	Date of Completion
145	10,100	Mch. 11, 1918
146	10,100	Apr. 30, 1918
148	10,205	Apr. 30, 1918
149	10,205	June 25, 1918

Affirmed.

33. The six tankers of approximately 9100 deadweight tons, covered by Bethlehem's proposals and the contracts in controversy, were substantially similar to Hulls Nos. 253 and 254, which had been completed at its Fore River Plant on June 30, 1917, and July 22, 1917, respectively (R., pp. 570-1).

Affirmed.

34. The said six tankers of approximately 9100 deadweight tons were also substantially similar to Hulls Nos. 244 and 245, completed at Bethlehem's Fore River Plant during February and April, 1916, respectively.

Affirmed.

35. The said six tankers of approximately 9100 deadweight tons were also substantially similar to Hulls Nos. 269 and 269, which were under construction at Bethlehem's Fore River shipyard in December, 1917 (Exs. G104-109, Doc. Ev., pp. 210-11, 225, R., p. 571).

Affirmed.

36. The six tankers of approximately 7500 deadweight tons, covered by Bethlehem's proposals and the contracts in controversy, were substantially

similar to Hulls Nos. 440 and 441 which had been completed at its Harlan shipyard, during July, 1916, and May, 1917, respectively (Exs. G31, 6, Doc. Ev., p. 578).

Affirmed.

37. The said six tankers of approximately 7500 deadweight tons were substantially similar to Hulls Nos. 442, 446, and 449, which were under construction at Bethlehem's Harlan shipyard during December, 1917.

Affirmed.

38. The seven cargo ships of approximately 7400 deadweight tons covered by Bethlehem's proposals and the contracts in controversy were substantially similar to Hull No. 167, which had been completed at its Sparrow's Point shipyard, on December 20, 1917 (Ex. G6, Doc. Ev., p. 578; R., pp. 369, 370, 581).

Affirmed.

39. The said seven cargo ships of approximately 7400 deadweight tons were also substantially similar to Hulls Nos. 169 and 170 which were under construction at the Sparrow's Point shipyard, in December, 1917, and which were actually completed on June 24 and July 25, 1918, respectively (Exs. G107, 104, 109, Doc. Ev., pp. 217, 209, 225; Ex. G3).

Affirmed.

40. The said twelve cargo ships of approximately 11,800 deadweight tons covered by Bethlehem's proposals and the contracts in controversy were substantially similar to the Hulls Nos. 132 to 139,

inclusive, and Hull No. 142, completed at Bethlehem's Union shipyard, at various dates from January 31, 1917, to August 25, 1917 (Ex. G6, Doc. Ev., p. 578; R., pp. 572-577).

Affirmed.

41. At the time of the negotiations relating to the first series of contracts in controversy, dated December 31, 1917, eight cargo ships of approximately 12,000 deadweight tons (being Hulls Nos. 162 to 169, inclusive) were then under construction at Bethlehem's Union shipyard.

Affirmed.

42. The cost accounting methods employed by Bethlehem in compiling and recording costs of ships constructed at its various shipyards, both prior and subsequent to the negotiations relating to the contracts in controversy, were substantially as described in Exhibit G168 (R., pp. 1021-3).

Affirmed.

43. Prior to the negotiations relating to the contracts in controversy, Bethlehem, through its subsidiary shipbuilding companies, had had many years of practical experience in obtaining and recording shipbuilding costs at its respective shipyards (Ex. G168).

Affirmed.

44. Under the cost accounting system prevailing at Bethlehem's various shipyards prior to the negotiations relating to the contracts in controversy, shipbuilding costs were compiled in three main divisions and approximately fifty subdivisions, each

of which was designated as a "job" and referred to by approximate job number (Ex. G168; R., pp. 39, 40).

Affirmed.

45. The said three main cost divisions represented material, labor and overhead expense, the general nature of the items included in each of these divisions being as described in Exhibit G168.

Affirmed.

46. The principal subdivision with respect to material represented substantially all materials required for the completion of the structural hull and was designated in Bethlehem's accounting system as "Job 12."

Affirmed.

47. Exhibit G6 (Doc. Ev., p. 578) correctly sets forth the general characteristics, the dates of keel laying and delivery, and the actual cost of material, labor and operating expense, respectively, with respect to the ships referred to therein.

Affirmed.

48. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records, the total cost of material in connection with the respective ships previously completed at its respective shipyards.

Affirmed.

49. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a

position to determine from its available cost records the total cost of "Job 12" materials and the unit and total prices of plates and shapes, respectively, required for the completion of "Job 12" in connection with the respective ships previously completed at its respective shipyards.

Affirmed.

50. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the respective costs of the principal items of material, exclusive of "Job 12" materials, required for the construction of the respective ships previously completed at its respective shipyards.

Affirmed.

51. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the total cost of direct labor in connection with the respective ships previously completed at its respective shipyards.

Affirmed.

52. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the respective average hourly earnings of direct labor required for the construction of the respective ships previously completed at its respective shipyards.

Affirmed.

53. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a posi-

tion to determine from its available cost records the respective hours of direct labor required for the construction of the respective ships previously completed at its respective shipyards.

Affirmed.

54. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the plant operating or overhead expense in connection with the ships previously constructed at its respective shipyards.

Affirmed.

55. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the administrative, selling and general expense in connection with the ships previously constructed at its respective shipyards.

Affirmed.

56. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the past depreciation charges at its respective shipyards as well as the depreciation charged against the cost of construction of the respective ships previously completed at said shipyards.

Affirmed.

57. At the time of the negotiations relating to the contracts in controversy the Fleet Corporation, by reason of war powers conferred upon it by Act of Congress and Executive Order, was authorized to

place orders with any manufacturers for any or all of their respective products which might be required for ship construction, at reasonable prices to be determined by it. If these prices were not acceptable to the manufacturers, their only recourse was to accept 75% thereof, with leave to sue the United States for such additional sum as might afford just compensation. All material orders placed by the Fleet Corporation took precedence over all private orders and contracts, and non-compliance therewith authorized it to take possession of the respective plants and use the same as it saw fit (Bill, Par. 7, Suit No. 3315).

Denied as stated. The shipbuilders were not required to take any contracts unless the terms were satisfactory. The Government had power to take possession of the shipyards but could not compel the performance of unacceptable contracts.

58. At the time of the negotiations relating to the contracts in controversy, government control of transportation and the allocation of raw materials also offered a practical means of controlling the prices of shipbuilding materials, as well as the manufacture and delivery of such materials.

Denied. There was no assurance of such control.

59. Exhibit G176 sets forth various price fixing agreements entered into between the War Industries Board, representing the Government, and the principal iron and steel manufacturers throughout the United States, including the Bethlehem Steel Corporation and its affiliated companies, as well as the various price recommendations of the Committee

on Steel and Steel Products of the American Iron & Steel Institute (R., p. 1020).

Affirmed.

60. By agreement between the War Industries Board and said iron and steel manufacturers, officially announced on September 24, 1917, maximum prices were established for iron ore, coke, pig iron, steel bars, shapes and plates, said prices being subject to revision January 1, 1918.

Affirmed.

61. Said iron and steel manufacturers were also advised by said announcement that:

> Measures will be taken by the War Industries Board for placing orders and supervising the output of the steel mills in such manner as to facilitate and expedite the requirements of the Government and its Allies for war purposes, and to supply the needs of the public according to their public importance and in the best interest of all, as far as practicable."

Affirmed.

62. By agreements between the War Industries Board and said iron and steel manufacturers officially announced by said Board on October 12, 1917, and November 6, 1917, respectively, maximum prices were established for the remaining principal basic, intermediate and finished iron and steel products required in ship construction (Ex. G176), said prices being subject to revision January 1, 1918.

Affirmed.

63. By said announcement of October 12, 1917, said iron and steel manufacturers were also advised that said maximum prices had been agreed upon on the assurance of those representing the steel industry that said prices equitably adjusted the relations of the steel interests to each other and would assist them in fulfilling their obligations to give the country one hundred per cent. of production at not to exceed said prices, and again stated that:

> "Measures will be taken by the War Industries Board for placing orders and supervising the output of the steel mills in such manner as to facilitate and expedite the requirements for war purposes of the Government and those nations associated with us, and to supply the needs of the public according to their public importance and in the best interest of all as far as practicable."

Affirmed.

64. Said announcement of November 5, 1917, also stated that:

> "In connection with the above, the iron and steel manufacturers have agreed promptly to adjust the maximum prices of all iron and steel products other than those on which prices have been agreed upon to the same general standard as those which have been announced. It is expected that this will be done promptly and consistently in line with the basic, intermediate and finished products, for which definite maximum prices have been established."

Affirmed.

65. Pursuant to the above announcement, the Committee on Steel and Steel Products of the American Iron and Steel Institute received from a subcommittee reports based on information received from representative manufacturers of various other lines of steel and steel products, and from such reports and other data available, the Committee reached a conclusion as to fair and reasonable prices for such products in line with the basic, intermediate and finished products, for which definite maximum prices had been established, and recommended to the industry under dates of November 13, November 20 and December 22, 1917, and January 7, 1918, that such prices be adopted as maximum prices, to take effect immediately, to apply to the requirements of the United States Government, to the requirements of the Allies and for domestic consumption within the United States (Ex. G176).

Affirmed.

66. Under date of December 28, 1917, the following announcement was made by the Committee on Public Information (Official Bulletin, December 29, 1917):

> "The President has approved the recommendation of the War Industries Board that the maximum prices heretofore fixed by the President upon the recommendation of the board upon ore, coke, pig iron, steel, and steel products, subject to revision on Jan. 1, 1918, be continued in effect until March 31, 1918. No new contracts calling for delivery of any of said commodities or articles on or after April 1, 1918, are to specify a price unless coupled

with a clause making the price subject to revision by any authorized United States Government agency, so that all deliveries after that date shall not exceed the maximum price then in force, although ordered or contracted for in the meantime.

"It is expected that all manufacturers and producers will observe the maximum prices now fixed."

Affirmed.

67. Under date of March 26, 1918, the following announcement was made by the Council of National Defense (Official Bulletin, March 27, 1918):

"The President has approved the recommendation of the Price Fixing Committee of the War Industries Board that the maximum prices heretofore fixed by the President upon the recommendation of the board upon ore, coke, steel and steel products, subject to revision on April 1, 1918, be continued in effect until July 1, 1918; from April 1 to July 1, however, the maximum price of basic pig iron be reduced from $33 to 32 per gross ton, and that the maximum price of scrap steel be reduced from $30 to $29 per gross ton. No new contracts calling for delivery of any of said commodities or articles on or after July 1, 1918, are to specify a price unless coupled with a clause making the price subject to revision by any authorized United States Government agency, so that all deliveries after that date shall not exceed the maximum price then in force, although ordered or contracted for in the meantime.

"It is expected that all manufacturers and producers will observe the maximum prices now fixed."

Affirmed.

68. The aforesaid maximum prices agreed upon by the War Industries Board and the aforesaid iron and steel manufacturers were fixed at amounts intended to encourage maximum production by insuring reasonable profits to every available steel mill (Ex. G176).

Affirmed as to the intent, but denied as to the insurance of profits.

69. Said maximum prices were such as to enable the larger and more efficient steel manufacturers an opportunity to make very liberal profits (R., p. 882; Ex. B11).

Denied. The evidence is not sufficient to support this request.

70. The foregoing maximum prices remained substantially unchanged throughout the period of the war.

Affirmed.

71. At the time of the negotiations relating to the ships in controversy it was contemplated that the Fleet Corporation would render Bethlehem every possible assistance in securing with the utmost practical expedition and at a minimum cost all materials required for their construction (R., p. 775).

Affirmed.

72. With respect to the ships in controversy which were similar, or substantially similar, to ships

previously constructed or then under construction at Bethlehem's respective shipyards, Bethlehem was in a position to place its material orders without substantial delay (Exs. G-104; Doc. Ev. p. 203).

Denied. The evidence as to all materials is not sufficient to support this request.

73. Orders for the plates, shapes and bars required for the ships covered by the preliminary agreements of January 5, 1918, and the formal contracts dated December 31, 1917, were placed by Bethlehem prior to February 7, 1918 (Ex. G-161).

Affirmed. This is substantially correct.

74. At the time of the negotiations relating to the contracts in controversy, Bethlehem and its affiliated companies were themselves large manufacturers of shipbuilding materials and were in a position to supply a very substantial part, if not all of the plates, shapes and bars required for said ships, as well as their principal auxiliary equipment.

The evidence upon these facts is not sufficient to justify an unqualified affirmance of this request.

75. Orders were placed by Bethlehem with the Bethlehem Steel Company, at the aforesaid maximum prices established by the War Industries Board, for over 43,000 tons of plates, shapes, and bars out of the total of approximately 60,000 tons required for the East Coast construction of the ships covered by the contracts in controversy dated December 31, 1917 (Ex. G-161).

Affirmed.

76. During the period of construction of the tank and cargo ships completed at Bethlehem's respec-

tive shipyards during 1917, shipbuilding labor cost had very substantially increased as compared with pre-war labor cost at said shipyards.

Affirmed.

77. The principal causes for the increase in labor cost during said period were as follows: (a) the employment of large numbers of workmen unskilled in shipbuilding; (b) the lack of any uniform wage schedule on either the East or West Coast, such lack of uniformity resulting in the loss of experienced workmen to other shipbuilding companies; (c) labor shortage; (d) strikes resulting from controversies as to wage rates and labor conditions, as well as the question of unionization; (e) lack of any effective means of controlling labor; and (f) lack of orderly receipt of materials due to competition among shipbuilders and chaotic transportation conditions (R., pp. 767-772; Ex. G-59, Doc. Ev., p. 32).

Affirmed.

78. From the time of the Government's requisition orders of August 3, 1917, it lent every possible assistance to Bethlehem and other shipbuilders to expedite ship construction.

Affirmed.

79. On November 4, 1917, acting through its agency, the Shipbuilding Labor Adjustment Board, the Government promulgated certain rules as to conditions of employment and established a schedule of minimum wages, retroactive to September 22, 1917, for all shipyards in the San Francisco Bay District, which wage rates were put into effect at the Union shipyard on or about November 24, 1917,

and extended to certain additional labor crafts on December 10, 1917.

Affirmed.

80. On December 10, 1917, in order to provide a stimulus to increase the output of ships in the shipyards of the Pacific Coast, and in order to encourage men who lived at great distances to leave their homes and enter on service in the shipyards, the Fleet Corporation announced that it would pay to all employees of shipyards on the Pacific Coast, with certain exceptions, an additional war service payment of 10%, effective on and after December 15, 1917, and that on February 1, 1918, a further stimulus to attract men to the shipbuilding industry would be provided by converting the foregoing war service payment to a permanent increase of 10% (Stip. of Facts, pp. 4, 5).

Affirmed.

81. During the autumn of 1917 the Fleet Corporation authorized Bethlehem to put into effect at its respective East Coast shipyards the wage rates prevailing at the nearest Navy Yards, and prior to January 3, 1918, said Navy Yard wage rates had actually been put into effect at Bethlehem's respective East Coast shipyards, insofar as practicable.

Affirmed.

82. At the time of the negotiations relating to the contracts in controversy, it was contemplated that government control of conditions of employment and wage rates would result in removing the principal causes of strikes and the loss of experienced workmen to other shipyards.

This was the hope—but without guaranty of realization.

83. At the time of the negotiations relating to the contracts in controversy, it was contemplated that stabilization of wage rates and conditions of employment for the entire shipbuilding industry by the Shipbuilding Labor Adjustment Board would result in the removal of the principal cause for Bethlehem's previous loss of experienced workmen to other shipyards. (See R., pp. 767-8 and 773-4.)

If hope is substituted for contemplated the request is affirmed.

84. Prior to the negotiations relating to the contracts in controversy, the Government had taken measures to exempt skilled and semi-skilled shipyard labor from the draft, the benefits of such exemption being illustrated by the fact that on February 1, 1918, 65 to 70% of Bethlehem's total labor force consisted of men within the draft ages, (R., p. 774), and the Fleet Corporation had also established a service department for the purpose of obtaining an adequate supply of labor most fitted by training and experience for ship construction, as well as for the purpose of improving the labor morale (R., pp. 774-5).

Affirmed.

85. At the time of the negotiations relating to the contracts in controversy it was contemplated that Bethlehem would be able to obtain workmen as fast as they could be absorbed at its respective shipyards in connection with the shipbuilding program

undertaken by it for the Fleet Corporation (Ex. G-125, Doc. Ev., p. 325; Roberts, Rec. p. 642).

Evidence fails to support the request as to time, and it is therefore denied.

86. Exemption of shipyard labor from the draft also afforded Bethlehem an effective means of controlling labor and inducing it to work.

Denied as stated. There was no assurance of the effectiveness of this exemption.

87. During 1917 Bethlehem changed many of its old established shipbuilding methods under which a workman had been trained to do a great many different things, and substituted a system of specialization, which was being very rapidly developed during the latter part of that year, under which it was possible to train workmen very rapidly for the particular or special work assigned to them.

Affirmed.

88. The various methods adopted by Bethlehem with respect to training workmen and increasing their efficiency were being very rapidly developed during the latter part of 1917 (Roberts, Rec., p. 643).

Affirmed.

89. At the time of the negotiations relating to the contracts in controversy dated December 31, 1917, it was also contemplated that the efficiency of labor would be very greatly increased by the fact that the tank and cargo ships to be built for the Fleet Corporation were of but few types and were also duplicates of or substantially similar to Beth-

lehem's standard types of ships. It was contemplated that this would enable Bethlehem to employ its existing labor force on work with which it was already familiar from actual experience, and would likewise permit it to employ all workmen over and over again on exactly the same kind of work in connection with the same type of ship (Ex. G-104, Doc. Ev., p. 203; Robert's Rec., pp. 645-6).

Affirmed as substantially in accord with the evidence.

90. At the Fore River shipyard, which may be considered as fairly representative of all Bethlehem's shipyards in the following respects, the normal pre-war labor force of between 4,000 and 5,000 men had been gradually increased to approximately 11,000 on December 6, 1917, which was but approximately 3,000 below the peak of 14,000 reached under capacity production on January 1, 1919 (R., pp. 665, 768-9).

Denied. The testimony as to numbers of men is so in conflict that Fore River cannot be taken as fairly representative of Bethlehem yards.

91. At the time of the negotiations relating to the contracts in controversy, it was also contemplated that the Fleet Corporation would endeavor to insure the orderly receipt by Bethlehem of an adequate supply of all materials required for the shipbuilding program undertaken by it for the Fleet Corporation (R., pp. 775-6).

Affirmed. This conclusion may be assumed, whether directly supported by evidence or not.

92. In view of the circumstances and conditions known to Bethlehem at the time of its December, 1917, negotiations with the Fleet Corporation, it was reasonable to suppose that under the "half-savings" form of contract Bethlehem, by the exercise of its best efforts, would be able to increase the average efficiency of labor at its respective shipyards during the period required for the construction of the ships in controversy, as compared with average efficiency at said shipyards under conditions prevailing during 1917, provided such efforts were not frustrated by reason of strikes or similar contingencies beyond its control (R., pp. 690, 692-3, 776-8).

Denied as stated. The testimony is that no one could tell what the future might develop so there was no basis for a "reasonable supposition".

93. Prior to the negotiations relating to the contracts in controversy and as a result of his close study of the labor situation during the year 1917 (Roberts' Rep., pp. 632, 642), it was contemplated by Powell that under the "half-savings" form of contract Bethlehem, by the exercise of its best efforts, would be able to increase the average efficiency of labor at its respective shipyards during the period required for the construction of the ships in controversy, as compared with average efficiency then existing; provided such efforts were not frustrated by reason of strikes or similar contingencies beyond its control (R., pp. 690, 692-3, 776-8, 786-7).

Denied as stated. Powell expressed hopes without assurances.

94. At the time of the negotiations relating to the respective tank and cargo ships in controversy Bethlehem was in a position to readily determine the approximate cost of the materials required for the construction of said ships at then existing prices, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards.

Denied. The proposals were not confined to all materials at then existing prices.

95. By means of a comparison of the costs of the principal items of material in "Job 12" required for the construction of similar or substantially similar tank and cargo ships previously constructed or then under construction at Bethlehem's respective shipyards, with the prices of similar items existing at the time of its negotiations with the Fleet Corporation relating to the tank and cargo ships in controversy, Bethlehem, at the time of said negotiations, was in a position to determine the approximate cost of "Job 12" materials required for said respective ships in controversy upon the basis of prices then existing.

Denied. See 94.

96. By comparison of the cost of the principal items of material, exclusive of "Job 12" material, required for the construction of similar or substantially similar tank and cargo ships previously constructed or then under construction at Bethlehem's respective shipyards, with the prices of similar items existing at the time of the negotiations with the Fleet Corporation relating to the tank and cargo

ships in controversy, Bethlehem, at the time of said negotiations, was in a position to readily determine the approximate cost of such material required for said respective ships in controversy upon the basis of prices then existing.

Denied. See 94.

97. With respect to Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, all of the materials required for their construction had been purchased and a large part thereof actually delivered prior to the negotiations relating to said contract (Exs. G-41, -96, -112; R., p. 210).

Affirmed with the substitution of "substantially all" for "all".

98. The total cost of materials required for the construction of Hulls Nos. 150, 151, 153 and 170 was $2,756,767.56, or $689,191.89 per ship (Ex. B-32).

Affirmed.

99. With respect to Hull No. 176 covered by Contract No. 196, all of the materials required for its construction had been purchased prior to the negotiations relating to said contract (Ex. G-112, Doc. Ev., p. 235).

Affirmed.

100. The total cost of materials required for the construction of Hull No. 176 was $429,932.31 (Ex. B-32).

Affirmed.

101. At the time of the negotiations relating to the respective tank and cargo ships in controversy it was contemplated by Bethlehem that armed guard

equipment and war zone requirements for said ships would cost approximately $7.00 per deadweight ton.

Affirmed.

102. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available records the approximate average hourly earning rates at its respective shipyards under the respective wage schedules referred to in Article 19 of the contracts in controversy (R., pp. 392-3, 406-10, 769, 526).

Affirmed.

103. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards, was in a position to determine the approximate number of hours required for the construction of the respective ships in controversy upon the basis of the average labor efficiency applicable to said similar or substantially similar ships.

Affirmed.

104. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards, was in a position to determine the approximate cost of direct labor required for the construction of the respective ships in controversy, upon the basis of the respective wage schedules referred to in said contracts and upon the basis of the average labor

efficiency applicable to said similar or substantially similar ships.

Affirmed. The conclusion however is not material to the issues as there was no assurance that these bases would remain constant.

105. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards, was in a position to determine the approximate cost of direct labor required for the construction of the respective ships in controversy, upon the basis of the respective wage schedules referred to in said contracts and upon the basis of labor efficiency existing at its respective shipyards at the time of said negotiations.

Affirmed, but see 104.

106. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown, by reason of their long training and experience in shipbuilding and their study and intimate knowledge of the labor situation, were in a position to determine approximately what Bethlehem might reasonably expect to accomplish with respect to increasing efficiency of labor at its respective shipyards during the period required for the construction of said ships as compared with average efficiency existing at said shipyards at the time of said negotiations and as compared with average efficiency in connection with the similar or substantially similar ships previously constructed at said shipyards (Roberts' Rec., p. 550).

Denied, because guessing against unascertainable future conditions is not the equivalent of "reasonable expectation".

107. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown were in a position to determine the probable approximate efficiency of labor at Bethlehem's respective shipyards during the period required for the construction of the said ships, upon the assumption that such efficiency would not be substantially affected by strikes, labor shortages, delays in delivery of materials, or other similar contingencies beyond its control (Roberts' Rec., p. 550).

Denied as stated. The assumptions are too many without sufficient support in fact to make such a finding material.

108. Prior to the negotiations relating to Contract No. 191 a substantial part of the direct labor required for the construction of Hulls Nos. 150, 151, 153 and 170 had already been performed (Exs. G-41, -96, -112).

Denied, because not sufficiently supported by evidence.

109. Under the cost accounting system prevailing at Bethlehem's shipyards prior to the negotiations relating to the contracts in controversy, plant overhead or operating expense consisted of material and labor not chargeable directly to any particular job or contract and covered such items as salaries of supervisory force and clerks, repairs, maintenance of buildings and equipment, insurance, property

taxes, light, heat and power, and other similar items. (Ex. G-168).

Affirmed.

110. At the time of the negotiations relating to the contracts in controversy Bethlehem's cost records showed that plant overhead or operating expense averaged approximately thirty-five per cent of the cost of direct labor in connection with the ships previously completed at its respective shipyards (Ex. G-6).

Denied as stated because this percentage does not reflect A. S. & G. and depreciation.

111. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to ships previously constructed and then under construction at its respective shipyards, was in a position to determine the probable approximate cost of plant overhead or operating expense in connection with the respective tank and cargo ships in controversy.

Denied. The variables were too many.

112. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Bethlehem was in a position to determine the probable approximate percentage relationship which plant overhead or operating expense would bear to the cost of direct labor in connection with said ships.

Denied. See 111.

113. Under the cost accounting system prevailing at Bethlehem's shipyards prior to the negotiations

relating to the contracts in controversy, administrative and general expense covered the expense of its executive office and consisted principally of salaries together with office expenses, such as light, heat, supplies and similar items (Ex. G-168).

Affirmed.

114. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to ships previously constructed and then under construction at its respective shipyards, was in a position to determine the probable approximate cost of administrative and general expense in connection with the construction of the respective tank and cargo ships in controversy.

Denied. See 111.

115. At the time of the negotiations relating to the contracts in controversy, Bethlehem's cost records showed that the total administrative, selling and general expense, including depreciation, with respect to the ships completed at its respective shipyards during 1917 average approximately five per cent of the total cost of direct labor, materials, and operating expense in connection therewith (Exs. G-60, G-6).

Affirmed.

116. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was contemplated that the percentage relationship of administrative and general expense to the total cost of direct labor, materials, and plant overhead or operating expense, in connection with said ships, would be substantially reduced as compared with the

percentage relationship of such items in connection with the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Denied. See 111.

117. At the time of the negotiations relating to the tank and cargo ships in controversy, Bethlehem, by reason of its available cost data, was in position to determine the approximate depreciation properly chargeable to the cost of construction of said ships.

Denied. See 111.

118. At the time of the negotiations relating to the contracts in controversy, Bethlehem's cost records showed that its total overhead expense, viz.: plant overhead or operating expense, administrative, selling and general expense and depreciation, had averaged approximately 65% of the cost of direct labor in connection with the ships previously constructed at its Fore River shipyard (Exs. G-155, G-60).

Affirmed.

119. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the total cost of Bethlehem of the materials required for the construction of the similar, or substantially similar, ships previously constructed at its respective shipyards.

Affirmed.

120. At the time of the negotiations relating to the respective tank and cargo ships in controversy,

the Fleet Corporation was uninformed as to the unit or total cost of the respective items of materials required for the construction of the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Affirmed.

121. At the time of the negotiations relating to the contracts in controversy, in the absence of information as to material costs in connection with the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards, the determination by the Fleet Corporation of the approximate cost to Bethlehem of the material required for the respective ships in controversy would have necessitated a study of plans and specifications of the respective ships, the preparation of bills of material, and the determination of weights and costs of the multitude of material items going to make up the total (R., pp. 621, 623-4, 263-5).

Denied. Cost of ships already completed could have been demanded of Bethlehem and the experience of Bowles and Radford was "the basis" for an educated guess as to future variables.

122. At the time of the negotiations relating to the tank and cargo ships in controversy, it was impracticable for the Fleet Corporation to undertake the long and involved task of building up from detailed plans and specifications estimates of the approximate cost to Bethlehem of the material required for the respective ships (R., 876-7, 986-994, 685-6, 980-3; Bill, par. 22).

Affirmed as stated, but such undertaking was not necessary.

123. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood by Bethlehem that the Fleet Corporation was not undertaking to build up from detailed plans and specifications estimates of the approximate cost to Bethlehem of the material required for said ships.

Affirmed upon fair inferences, though unsupported by evidence.

124. At the time of the negotiations relating to the respective tank and cargo ships in controversy the Fleet Corporation was uninformed as to the probable approximate cost of the materials required for the respective ships.

Affirmed.

125. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the total cost of direct labor required for the construction of the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Affirmed as stated. It is fair to assume that the equivalent cost was available to the Fleet Corporation from other sources.

126. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the average hourly earning of direct labor in connection with the similar, or substantially similar, ships

previously constructed at Bethlehem's respective shipyards.

Affirmed. See 125.

127. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the hours of direct labor required for the construction of the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Affirmed. See 125.

128. At the time of the negotiations relating to the respective contracts in controversy, the Fleet Corporation was not in a position to determine the approximate average hourly earning rates at Bethlehem's respective shipyards under the wage schedules referred to in said contracts.

Affirmed. See 125.

129. At the time of the negotiations relating to the contracts in controversy, the Fleet Corporation was not in a position to determine what Bethlehem might reasonably expect to accomplish under said contracts in the way of increasing efficiency of labor at its respective shipyards during the contemplated period of construction.

Affirmed. Bethlehem's position was not substantially better.

130. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate cost to Bethlehem of

the direct labor required for their respective construction upon the basis of the wage schedules referred to in the respective contracts.

Affirmed. See 129.

131. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the nature of the particular items included in plant overhead or operating expense, or in administrative and general expense, under Bethlehem's system of cost accounting, or as to the cost of such items in connection with ships previously constructed at Bethlehem's respective shipyards.

Affirmed.

132. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the past depreciation charges against ship-construction at Bethlehem's respective shipyards.

Affirmed.

133. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate cost to Bethlehem of plant overhead or operating expense in connection with said ships upon the basis of the wage schedules referred to in the respective contracts.

Affirmed. See 129.

134. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine

the probable approximate administrative and general expense in connection with the construction of said ships.

Affirmed. See 129.

135. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate depreciation chargeable to the construction of said ships.

Affirmed. See 129.

136. At the time of the negotiations relating to Hulls Nos. 150, 151, 153, 170 and 176, subsequently included in Contracts Nos. 191 and 196, respectively, the Fleet Corporation did not know the actual cost to Bethlehem of the materials theretofore purchased for said ships.

Affirmed. If deemed important, the Fleet Corporation could have obtained this information before signing these contracts.

137. At the time of the negotiations relating to Hulls Nos. 150, 151, 153 and 170, the Fleet Corporation did not know the actual cost to Bethlehem of the labor which had already been performed in connection with the construction of said ships.

Affirmed. See 136.

138. In its negotiations with the Fleet Corporation relating to the respective tank and cargo ships in controversy, Bethlehem presented no breakdown of cost estimates other than that which is contained in its proposal dated December 19, 1917.

Affirmed.

139. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was impracticable for the Fleet Corporation to make any analysis of the estimates of cost submitted by Bethlehem (R., pp. 986-991, 876-7, 685-6, 980-3).

Denied: The Fleet Corporation could have analyzed these estimates and compared them with other cost estimates had the Fleet Corporation deemed such a course to be an aid to educated guessing.

140. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate cost to Bethlehem of building said ships upon the basis of then existing material costs and upon the basis of the respective wage schedules designated in the contracts in controversy (R., pp. 482-3).

Affirmed. Such cost was a guess for either Bethlehem or the Fleet Corporation.

141. Following a meeting held in Washington on June 15, 1917, attended by Powell and other shipbuilders, the General Manager of the Fleet Corporation sent a letter dated June 15, 1917, (a copy of which appears as Exhibit G58), to the Fore River Shipbuilding Corporation and to each of the other four shipbuilding companies which were then subsidiaries of the Bethlehem Steel Corporation, requesting formal proposals from each of said companies with respect to the ship construction which they were able to undertake for the Fleet Corporation, stating, *inter alia* (Doc. Ev., p. 28):

"This corporation will permit you, if desired, to build your own types of vessel, to which you are accustomed, provided the plans and specifications are approved by our Naval Architect. It desires to receive formal proposals based on price per ton dead weight carrying capacity, with dates of delivery. So far as possible the Corporation will give preference to the lowest prices received, other things being equal, but due consideration will be given promised times of delivery, the type of vessel offered and other characteristics of the proposal from the standard of desirability as viewed by the Corporation. Your proposals should be accompanied by a schedule of complete information, giving the assumptions on which your proposal is based, as described hereinafter. If your proposal is accepted, these schedules will be the basis of the contract and you will be protected as regards any increases in material, labor or accessories. These schedules should be properly certified as being the correct basis of your estimate and should include—first, a schedule, in as much detail as practicable, showing your present wage schedule; second, there should be a schedule of your base material prices. In the case of steel no firm price has yet been agreed upon with the steel companies. You may use in your estimate, the following base prices—plates, 4¼c, shapes 4c, bars 3¾c, f. o. b. Pittsburgh. If the actual price is higher than this, the corporation will pay the difference. If it is lower than this, a deduction will be made in your contract price. Before making any commitments, the written approval of this corpora-

tion should be obtained. Your schedule unit prices of all materials should be as complete as possible. There should also be submitted a schedule giving your arrangements and prices for the purchase of boilers, engines, shafting, winches, windlasses, deck and life boat equipment, navigating instruments and all important auxiliaries that go with the completed ship.

"If the Corporation is able to purchase these accessories in large quantities by combining the order for all of its steel steamships, it will expect to absorb these savings. If you cannot cover at the prices named in your schedule, due to an advance in prices, after you have made your estimate, the corporation will protect you on your estimated price. If you have any special suggestions or requests to make requiring additional protection as regards the item of labor than is given hereinabove, you may state same in your proposition."

Affirmed.

142. Said letter of June 15, 1917 (Ex. G-58), was answered by the Bethlehem Steel Corporation upon behalf of each of its subsidiary shipbuilding companies by letter dated June 26, 1917, a copy of which appears as Ex. G59 (Doc. Ev., p. 29).

Affirmed.

143. Throughout the negotiations relating to the tank and cargo ships included in the contracts in controversy dated December 31, 1917, the Fleet Corporation endeavored to persuade Powell to under-

take the construction of said ships under lump-sum contracts (R., pp. 470-1, 193-4, 214).

Affirmed.

144. Powell refused to accept lump-sum contracts for the tank and cargo ships in controversy and insisted that the "half-savings" form of contract which he had originated (R., pp. 190-1) and which had been adopted by the Navy Department in connection with the destroyer contracts of December 6, 1917 (Exs. G157, 158), should likewise be adopted by the Fleet Corporation (R., pp. 470-1).

Affirmed.

145. In suggesting the adoption of the "half-savings" form of contract in connection with the contracts in controversy, Powell stated in his proposals dated December 13 and 19, 1917 (Exs. G-104, 109; Doc. Ev., pp. 202, 227):

> "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is, therefore, impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that

the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation.

* * *

"This Company's letter of December 13th, proposed to construct such vessels as may be ordered by the Emergency Fleet Corporation for actual cost plus a fee, with an agreed upon base cost, this Company to be paid, in addition to the fee, one-half of any saving that may be made below this base cost, and with a further provision that the said base cost will be increased, due to any increase of rate in wages that may be paid by the order of the Emergency Fleet Corporation. This would not apply in the case of the troop ships, as it is impossible to make an approximate estimate of their cost, and it is therefore proposed that, if these vessels must be built at the Sparrow's Point Plant, they shall be constructed on a straight cost and percentage basis."

Affirmed.

146. The necessity of making an allowance in a lump-sum form of contract for the possible occurrence of contingencies which might result in actual cost exceeding lump-sum prices, was the reason for Powell's statement that it was "impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation." (R., pp. 766-7, 473-6).

Affirmed.

147. At the time of the negotiations relating to the tank and cargo ships in controversy, it was understood that any lump-sum prices which would have been acceptable to Bethlehem for the respective ships would be very substantially in excess of the respective base prices plus fixed fees agreed upon with respect thereto (R., pp. 760, 762-7; Roberts' Rec., pp. 648-9).

Affirmed.

148. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the respective estimates and fixed fees submitted by Bethlehem and agreed upon for said ships were not supposed to be the equivalent of lump-sum prices which would have been acceptable to Bethlehem (R., pp. 765-6).

Affirmed.

149. At the time of the negotiations relating to the contracts in controversy, it was understood that shipbuilders were very reluctant to accept lump-sum prices for the construction of ships and that said contracts were accepted only at prices which required the Fleet Corporation to assume the risk of possible increase in cost which might result from strikes, labor shortage, increase in labor rates, or other similar contingencies beyond its control (R., p. 478).

Affirmed.

150. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem with respect thereto were sup-

posed to be determined upon a basis similar to that employed in determining the estimates submitted by it in connection with the destroyer contracts of December 6, 1917, copies of which appear as Exhibits G-157-158 (R., p. 760).

Denied as stated. The evidence does not justify such a finding.

151. Powell and Brown had represented Bethlehem in the negotiations relating to the said destroyer contracts of December 6, 1917.

Affirmed.

152. In explaining the principles, purposes, and objects of the "half-savings" form of contract and its advantages as compared with the lump-sum form of contract, Powell testified before the Committee on Commerce of the United States Senate on February 1, 1918, that if Bethlehem had been obliged to construct the destroyers covered by the contracts of December 6, 1917 (Exs. G-157-158) upon a lump-sum basis, any lump-sum prices acceptable to Bethlehem would have been approximately $2,000,000 per ship, instead of the base price of $1,500,000, plus the fixed fee of $135,000, designated in said contracts, or a total of $1,635,000 per ship (R., pp. 763-5).

Affirmed.

153. At the time of the negotiations relating to the tank and cargo ships in controversy, it was understood that the base price of $1,500,000 per destroyer named in said destroyer contracts of December 6, 1917, was supposed to be based upon the

then existing cost of materials required for their construction (R., pp. 763, 197).

Denied as stated because not supported by evidence.

154. At the time of the negotiations relating to the contracts in controversy, it was understood that any "savings" in which Bethlehem might participate in connection with said destroyer contracts of December 6, 1917, were supposed to result solely from its efforts and ability to increase efficiency of labor and management, as compared with average efficiency under conditions then existing at its respective shipyards where said destroyers were to be constructed (R., pp. 776-9).

Denied. The destroyer contracts were not a part of any understanding affecting the contracts in controversy.

155. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem and designated as base prices in the respective contracts in controversy (other than those relating to ships for which materials had already been purchased) were supposed to be based upon material prices then existing.

Denied. Existing prices were assumed to be taken into consideration in estimating the future contingencies.

156. In his proposal of December 13, 1917 (Ex. G-104) Powell stated:

"This Company has contracts with the Midvale Steel & Ordnance Company, dated March

29th, 1917, and the Central Iron & Steel Company, dated March 19th, 1917, for a total of 6,850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at Six Cents (6¢) per pound for the steel plates and Fifteen Cents (15¢) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely Six Cents (6c) for Steel Plates and Fifteen Cents (15c) per pound for Boiler Steel."

Affirmed.

157. In the estimates submitted in his proposal dated December 19, 1917 (Ex. G-109), Powell added $2.50 per deadweight ton on account of the aforesaid contract steel referred to in his proposal of December 13, 1917, said allowance being referred to as follows:

"Extra cost of steel, as per page 6, letter of December 13th, averaged over all extra tonnage—$2.50 per d. w. ton."

Affirmed.

158. At the time of the negotiations relating to the contracts in controversy, it was understood that the foregoing allowance of $2.50 per deadweight ton

on account of "extra cost of steel" was supposed to represent the difference between the contract and War Industries Board prices for said steel (R., pp. 100-1; Roberts' Rec., pp. 612-13).

Affirmed.

159. At the time of the negotiations relating to the respective tank and cargo ships in controversy (other than those for which materials had already been purchased), it was understood that Bethlehem was not intended to make any substantial "savings" against the estimates of material costs which it was supposed to have made for said respective ships (R., pp. 792-3).

Denied. The evidence does not disclose such understanding.

160. At the time of the negotiations relating to Hulls Nos. 150, 151, 153, 179 and 176, subsequently included in Contracts Nos. 191 and 196, it was understood that Bethlehem was not intended to make any substantial "savings" with respect to materials in connection with its estimates for said ships.

Denied. The evidence does not disclose such understanding.

161. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem "and the estimated actual cost to the Contractor", designated as base prices in the respective contracts, were supposed to be based upon the respective wage schedules referred to in said contracts.

Denied. The evidence does not disclose such understanding.

162. At the time of the negotiations relating to Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, Bethlehem was in a position to determine the probable approximate cost of said ships upon the basis of efficiency then existing and upon the basis of actual prices of material already contracted for and upon the basis of the wage schedule designated in said contract.

Affirmed, but as so affirmed it is not material as such cost would make no allowance for future contingencies.

163. At the time of the negotiations relating to Hull No. 176 included in Contract No. 196, Bethlehem was in a position to determine the probable approximate cost of said ship upon the basis of efficiency then existing and upon the basis of actual prices of material already contracted for and upon the basis of the wage schedule designated in said contract.

Affirmed. See 162.

164. At the time of the negotiations relating to the remaining tank and cargo ships in controversy, Bethlehem was in a position to determine the probable approximate cost of said respective ships upon the basis of efficiency and material prices then existing and upon the basis of the wage schedules designated in the respective contracts.

Affirmed. See 162.

165. At the time of the negotiations relating to the troop ships included in Contract No. 182, Beth-

lehem was not in a position to determine the probable approximate cost of said troop ships for the reason that they represented a new type of construction with respect to which there was no cost data available such as existed with respect to the tank and cargo ships in controversy (Ex. G-109, Doc. Ev., p. 227).

Affirmed. Neither Bethlehem nor the Fleet Corporation were enabled to anticipate the future beyond the point of an educated guess.

166. At the time of the negotiations relating to Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, it was understood that the estimates of cost submitted by Bethlehem and designated as base prices in said contract were supposed to represent estimates of probable approximate cost to Bethlehem of building said ships upon the basis of the wage schedule designated in said contract and upon the basis of actual prices of material already contracted for.

Denied. The evidence discloses no such understanding.

167. At the time of the negotiations relating to Hull No. 176 included in Contract No. 196, it was understood that the estimate of cost submitted by Bethlehem and designated as the base price in said contract was supposed to represent an estimate of the probable approximate cost to Bethlehem of building said ship upon the basis of wage schedule designated in said contract and upon the basis of the actual prices of material already contracted for.

Denied. 166.

168. At the time of the negotiations relating to the remaining tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem and designated as base prices in the respective contracts were supposed to represent estimates of the probable approximate cost to Bethlehem of building said respective ships upon the basis of the wage schedules designated in the respective contracts and upon the basis of material prices then existing.

Denied. 166.

169. At the time of the negotiations relating to the tank and cargo ships in controversy, it was understood that Bethlehem had made such study of the cost data available to it as would enable it to determine the probable approximate cost of building said respective ships upon the basis of the wage schedules designated in the respective contracts and upon the basis of the material prices then existing.

Denied. See G 109.

170. At the time of the negotiations relating to the tank and cargo in controversy, it was understood that any substantial "savings" effected by Bethlehem with respect to their respective costs of construction, were supposed to result solely from an increase in the average efficiency of labor and management then existing (R., pp. 776-8, 692-3, 689-690, 778-9).

Denied as stated, unless increase in efficiency of service of material is intended to be included in efficiency of management.

171. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that Bethlehem's ability to build such ships for less than the estimates of actual cost designated as base prices in the respective contracts (plus increases representing increases in wage rates and changes and extras) was supposed to depend upon its ability to effect economies by increasing the efficiency of management and labor as compared with average efficiency then existing.

Denied as stated, the word "understood" assumes too much. See also 170.

172. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the consideration for allowing Bethlehem to participate in "savings" was supposed to be the fact that such "savings", if any, would result from and be substantially commensurate with economies effected by increasing efficiency of management and labor, as compared with average efficiency then existing.

Denied. It states too much. See 170 and 171.

173. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that under the "half-savings" form of contract Bethlehem was supposed to participate only in such "savings", if any, as were earned and made possible by its efforts and ability to reduce cost by increasing efficiency.

Denied. Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency.

174. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that participation in "savings" was supposed to represent a bonus or additional compensation to be earned by Bethlehem as consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing.

Affirmed, but see als 170, 171 and 173.

175. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the base prices named in the respective contracts were not supposed to result in the payment of any bonus or compensation to Bethlehem, in addition to the respective fixed fees, for special efforts to increase efficiency unless such efforts proved successful.

Denied as stated. 174 is a more accurate statement of the purpose of the contract.

176. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that insofar as Bethlehem's ability to earn any compensation under the respective contracts in addition to its fixed fees was concerned, it was supposed to assume the risk of any possible increase in then existing material prices before it was able to contract for its requirements (R., pp. 692-3, 792-3).

Affirmed, if risk means merely the risk of increase in cost over base cost.

177. At the time of the negotiations relating to the respective tank and cargo ships in controversy,

it was understood that insofar as Bethlehem's ability to earn any compensation under the respective contracts in addition to its fixed fees was concerned, it was supposed to assume the risk of any increases in actual cost which might possibly result from strikes, labor shortage, delays in transportation, increase in freight rates, and other similar contingencies beyond its control (R., pp. 692-3, 776-8, 787).

Affirmed: See 176. Such increases in cost however were not to be paid by Bethlehem.

178. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the base prices designated in the respective contracts were not intended to include any allowance representing increase in cost which might possibly result from the occurrence of the aforesaid contingencies over which Bethlehem had no control.

Affirmed.

179. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that Bethlehem had made such study of cost data available to it as would enable it to determine base prices which would afford it a reasonable opportunity of making a reasonable "saving", provided it was successful in its efforts to increase the efficiency of management and labor as compared with average efficiency then existing.

Affirmed.

180. The estimates designated as base prices in the respective contracts in controversy were represented by Powell and Brown as being the lowest

prices which, according to their best and mature judgment, would afford Bethlehem a reasonable opportunity to effect "savings" as a result of its efforts and ability to increase efficiency of management and labor as compared with average efficiency then existing.

Affirmed.

181. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates submitted by Bethlehem and the base prices named in the respective contracts were not supposed to include any allowance for Federal taxes (R., pp. 689, Roberts' Rec., p. 547).

Affirmed. Bethlehem hoped to realize enough from its share of savings to pay Federal taxes.

182. The estimates of cost submitted in Powell's proposal dated December 19, 1917 (Ex. G-109) represented figures furnished to him by Brown, plus an additional allowance of approximately $10.00 per deadweight ton added to such figures by Powell (R., 327-8, 451-2, 677-8).

Affirmed.

183. Said allowance of approximately $10.00 per deadweight ton added by Powell to the figures furnished by Brown, included the item of $2.50 per deadweight ton for "extra cost of steel" referred to in Powell's proposals dated December 13 and 19, 1917 (Exs. G-104, 109) and the balance, or approximately $7.50 per deadweight ton, according to Pow-

ell's own admission, represented an allowance "for trading purposes" (R., pp. 732-4).

Affirmed.

184. Powell himself did no estimating in connection with any of the estimates submitted for the ships covered by the contracts in controversy, other than to determine the amount to be added "for trading purposes" and for "extra cost of steel" to the figures furnished to him by Brown (R., pp. 70-1, 108, 115-6, 257, 327-8, 332-3, 451-3, 677-8, 701-2, 732-4).

Affirmed.

185. The breakdown of costs set forth in Bethlehem's proposal dated December 19, 1917 (Ex. G-109) was actually based upon no study or analysis of cost whatsoever. Upon the contrary, said breakdown represented an arbitrary division of the total cost estimates presented in said proposal and was submitted for the purpose of lending a semblance of support to such estimates (R., pp. 109, 110).

Affirmed.

186. At the time of Bethlehem's proposal dated December 19, 1917 (Ex. G-109), Brown advised Powell that the allowance for administrative, selling, and general expense made in the breakdown of costs set forth in said proposal, was excessive (R., pp. 105, 106).

Affirmed.

187. Prior to the conference of January 3, 1918, Brown furnished Powell with certain figures representing alleged estimates of cost of the tank and

cargo ships which Bethlehem proposed to build for the Fleet Corporation, which estimates corresponded with the prices indicated by the chart offered in evidence as Exhibit G-134½, for tank and cargo ships of similar tonnages (R., pp. 115-6, 332-3, 451-2).

Affirmed.

188. The estimates of cost which Brown furnished to Powell for use in connection with the conference of January 3, 1918, were approximately $10.00 per deadweight ton less than the estimates named in the proposal of December 19, 1918 (R., pp. 732-3, 327).

Affirmed.

189. The chart which appears as Exhibit G-134½ was the sole basis for all estimates furnished to Powell by Brown with respect to the ships in controversy (R., pp. 452-3; Roberts' Rec., pp. 196-7).

Denied. The knowledge of Powell and Brown based on experience confirmed the chart.

190. Powell had determined in advance of the conference of January 3, 1918, that he would not agree to base prices for the tank and cargo ships covered by Bethlehem's previous proposals which were less than the respective estimates furnished to him by Brown for use in connection with said conference (R., pp. 115-16).

Affirmed.

191. Powell had also determined in advance of the conference of January 3, 1918, that Bethlehem would not undertake the construction of the ships

in controversy under a lump-sum form of contract, and that he would insist upon the adoption of the half-savings form which had been originated by him and suggested in Bethlehem's proposal of December 13, 1917 (R., pp. 190-1, 470-1).

Affirmed.

192. Bowles and Radford had known both Powell and Brown intimately for many years prior to December, 1917, and were fully informed as to their shipbuilding experience and ability (R., pp. 27-30, 258, 488, 1013).

Affirmed.

193. At the conference of January 3, 1918, Bowles endeavored without success to persuade Powell to accept lump-sum contracts for the tank and cargo ships covered by Bethlehem's proposals. Powell refused to accept lump-sum contracts for such ships, and Bowles was finally obliged to acquiesce in the half-savings form suggested by Powell in order to reach an agreement (R., pp. 470-1, 193-4, 214).

Affirmed.

194. At the conference of January 3, 1918, Powell represented that the estimates submitted by Bethlehem for the tank and cargo ships then under discussion were fair and reasonable and argued in support of their propriety (R., p. 111).

Affirmed.

195. At the conference of January 3, 1918, as a result of objections made by Bowles, Powell made several reductions in the estimates submitted by

Bethlehem, until he arrived at the figures subsequently named as the base prices or "estimated actual cost to the contractor" designated in the respective contracts in controversy (R., pp. 110-112).

Affirmed.

196. At the conference of January 3, 1918, neither Bowles, Radford, nor any other representative of the Fleet Corporation, submitted or suggested to Bethlehem any estimates or counter estimates, their criticism being limited to the opinion expressed by Bowles that the original and reduced estimates submitted by Powell were too high (R., pp. 110-112, 735-6).

Affirmed.

197. At the conference of January 3, 1918, upon Powell's refusal to further reduce Bethlehem's estimates below the amounts subsequently named as base prices in the respective contracts, Bowles questioned Brown as to the propriety of such prices and was assured by Brown that they were about as accurate as could be arrived at under the circumstances (R., p. 112).

Affirmed though it could be stated more nearly in the language of Brown.

198. At the conference of January 3, 1918, upon being advised by Brown that the reduced estimates insisted upon by Powell were about as accurate as could be arrived at under the circumstances, Bowles and Radford agreed to such prices subject to confirmation by Piez (R., pp. 114-5).

Affirmed. See 197.

199. Following the conference of January 3, 1918, Bowles and Radford reported to Piez under date of January 5, 1918, as follows (Ex. G-117, Doc. Ev., p. 258):

"January 5, 1918

Memorandum for the Vice President & General Manager:

Bethlehem Shipbuilding Corporation, Ltd.

We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to

their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that Corporation. Realizing that the Nation will need these vessels we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,
Division of Steel Ship Construction.

G. S. Radford,
Manager,

Enclosures

Contract Division."

Affirmed.

200. At the time of the negotiations relating to the contracts in controversy, the relations between Powell and Piez were very close. Piez, as Powell knew, had had no shipbuilding experience whatsoever, and had implicit confidence in Powell's integrity and shipbuilding ability and experience, and was accustomed to look to him for information and assistance with respect to matters of shipbuilding (R., pp. 737, 748, 871, 871 (a), 879).

Affirmed.

201. Upon his receipt of the report of Bowles and Radford, dated January 5, 1918 (Ex. G-117), Piez endeavored to get Powell to agree to a further reduction in the prices tentatively agreed upon at the conference of January 3, 1918 (R., p. 879).

Denied. Not supported by the evidence.

202. Powell insisted that the prices tentatively agreed upon at the conference of January 3, 1918, were fair and reasonable, and in reliance upon such representations Piez confirmed said prices by his letters of January 5th, 1918, copies of which appear as Exhibits G118, 119, 120 (R., pp. 879, 113-5).

Denied. Not supported by the evidence.

203. At the time of awarding the preliminary contracts represented by the letter of January 5, 1918 (Exs. G-118, -119 and -120), Contract No. 153, dated December 17, 1917. (Ex. G-198), between the Fleet Corporation and the Moore and Scott Iron Works of Alameda (the name of which Company was subsequently changed to the Moore Shipbuilding Corporation), provided for the construction of six tankers of 10,000 deadweight tons each, upon a cost-plus as distinguished from a lump-sum basis (R., pp. 888-9).

Affirmed.

204. The ships referred to in Piez's letters of January 5th, 1918 (Exs. 9-118, 119, 120), became the subjects of the respective contracts in controversy, dated December 31, 1917 (Ex. C), the base prices and fixed fees designated in said contracts

being the respective base prices and fixed fees confirmed by said letters (R., pp. 630-4).

Affirmed.

205. In agreeing to the base prices and fixed fees named in the respective contracts in controversy, dated December 31, 1917 (Ex. C), the Fleet Corporation relied upon Bethlehem's representations that the estimates submitted by it to the Fleet Corporation were fair and reasonable and about as accurate as could be arrived at under the circumstances.

Denied. See Exhibit G, 117 (Request 199 supra).

206. Under date of January 17, 1918 Brown addressed the following letter to the Fleet Corporation relating to Union Hulls Nos. 215-16 subsequently included in Contract No. 230 (Ex. G-122, Doc. Ev., pp. 272-3):

> "Referring to your letter of the 5th instant with reference to Hulls Nos. 150, 151, 153 and 170, we hereby confirm the oral advice given to you by our Mr. Brown that in advising you in regard to our stock ships under construction at our Union Plant we inadvertently omitted to report that we had at said plant general plans and specifications of and had ordered some materials for two other stock vessels, to which we assigned on our books the numbers 214 and 216. * * *
>
> "The materials ordered for these vessels consist of structural steel and anchors and chains. * * *

"If you shall decide that these two hulls are covered by your requisition order, we desire that they shall be treated in the same way and covered by contracts the same as our Hulls Nos. 150 and 153. The estimated price of each is to be $2,124,000, with a fixed profit of $212,400 for each vessel and one-half of any saving under the estimated price, as provided in such contract."

Affirmed.

207. Under date of April 8, 1918, Piez replied to Bethlehem's letter of January 17, 1918 (Ex. G-122), as follows (Ex. G-128, Doc. Ev., p. 377):

"In reply to your letter of January 17th offering to construct two of your stock cargo vessels of about 11,800 tons d. w. capacity, for the Board, you are hereby given an order, as a preliminary step to entering into contract with the Corporation, for the construction of the above vessels; the vessels to be constructed under a cost plus fee basis form of contract, the estimated base price to be $2,000,000.00 per vessel, with a minimum fee of $200,000.00 per vessel. Any saving cost to be divided equally between the Corporation and yourself."

Affirmed.

208. Under date of April 16, 1918, Powell replied to Piez's letter of April 18, 1918 (Ex. G-128), as follows (Ex. G-130, Doc. Ev., p. 383):

"Your letter of the 8th instant replied to ours of January 17th last, and as a preliminary step to entering into contract with the Corpora-

tion for the construction of two stock vessels known as Hulls 215 and 216 to be constructed at the Union Plant, the Corporation offers an estimated base price of Two Million ($2,000,000.00) Dollars per vessel and a minimum fee of Two Hundred Thousand ($200,000) Dollars.

"This Company considers these prices as inadequate to afford it a proper remuneration for its efforts.

"In view of the above, it is strongly urged that no reduction be made in our original base price, but as stated in our conference yesterday, in order to prevent further delay in the construction of these vessels, we will accept as a base price on them Two Million Seventy-Five Thousand ($2,075,000) Dollars and a minimum fee of Two Hundred Seven Thousand Five Hundred ($207,500) Dollars, any saving in the cost to be divided equally between the Corporation and this Company—and with the further understanding that the contract for these vessels will be in all other respects the exact duplicates of those executed for Hulls 150, 153 and 170, building at our Union Plant."

Affirmed.

209. Under date of April 22, 1918, Piez replied to Powell's letter of April 16, 1918 (Ex. G-130) as follows (Ex. G-133; Doc. Ev., p. 389):

"In reply to your letter of the 16th instant, stating that you consider the estimated base cost named in our letter of the 8th instant too low to insure you a workable profit, and asking

that it be increased to not less than $2,075,000 with a corresponding minimum fee of $207,500 per vessel, you are advised that in view of the statements contained in your above letter the Corporation agrees to the increase in question. Accordingly the estimated base price stated in our letter of the 8th instant should be modified to read $2,075,000, with a corresponding increase in minimum fee to $207,500 per vessel."

Affirmed.

210. In agreeing to the base price and fixed fee designated in Contract No. 230 covering Hulls Nos. 215 and 216, Piez relied upon Bethlehem's representations, in effect, that les prices would be inadequate to afford it fair and reasonable compensation.

Denied as stated.

211. By letter dated February 25th, 1918 (Ex. G-125), Powell advised the Fleet Corporation that "*owing to the rapid increase in the supply of labor at the Sparrow's Point Plant,*" Bethlehem was in a position to build four additional tankers of 10,000 d. w. t., duplicates of those covered by Contract No. 179, and three additional cargo ships of 7,400 d. w. t., duplicates of those covered by Contract No. 178, as well as to specify delivery dates, and stated (Doc. Ev., p. 326):

"We propose to construct the above vessels for the same price and under the same terms and conditions as are embodied in the contracts now in force between our respective Corporations, except as regards deliveries given above.

We feel that in order to operate this plant with the greatest efficiency, it will be necessary to obtain additional tonnage. Otherwise, by the latter part of 1918 there will be several unoccupied ways and if the United States Shipping Board, Emergency Fleet Corporation have contracted for their full requirements, we respectfully request that we be permitted to negotiate with outside parties for the available space."

Affirmed.

212. As a result of the efforts of the Fleet Corporation to obtain a reduction in the base prices proposed in Powell's letter of February 25, 1918 (Ex. G-125), Powell addressed to it a letter dated March 7, 1918, reading, in part, as follows (Ex. G-126, Doc. Ev., p. 337):

"On February 25th this Company submitted a proposal for additional tonnage to be constructed at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd.

"On the 1st instant the Vice-President and General Manager of the Emergency Fleet Corporation discussed by telephone with the writer the prices quoted on these vessels.

"Please be advised that this Company cannot offer these vessels to the Emergency Fleet Corporation on any lower basis than that quoted in our letter above mentioned, since its mature judgment leads it to believe that a less price will not yield a living profit."

Affirmed.

213. In reply to Powell's letter of March 7, 1918 (Ex. G-126), Piez wrote to Bethlehem under date of March 18, 1918 (Ex. G-127) as follows (Doc. Ev., p. 341):

> "In reply to your letter of the 7th instant, relative to your proposal of February 25th, covering the construction of four 10,100 ton tankers and three 7,400 ton cargo vessels at your Sparrows Point plant, the said vessels to be similar to those you are now building for the Board under contracts Nos. 179 and 178, respectively, you are hereby given an order for the construction of the above vessels under the terms of the said contracts with the exception that the estimated base cost in the cases of the tankers is to be reduced to $2,000,000 and in the case of the cargo vessels to $1,295,000; the fee contemplated by your present contracts, in both instances, to remain the same.
>
> "Kindly acknowledge receipt of this letter and signify your acceptance or rejection of the above order."

Affirmed.

214. The tank and cargo ships referred to in the foregoing correspondence (Exs G-125, -126, -127) became the subject of Contract No. 226 (Ex. C).

Affirmed.

215. In agreeing to the base prices and fixed fees designated in Contract No. 226 (Ex. C), Piez relied upon Bethlehem's representations, in effect, that its

mature judgment led it to believe that less prices would not yield it a living profit.

Denied as stated.

216. In agreeing to the base prices and fixed fees designated in the remaining contracts in controversy, dated subsequent to December 31, 1917 (Ex. C), the Fleet Corporation relied upon Bethlehem's representations, in effect, that less prices would not afford it fair and reasonable compensation for the services to be performed by it under the respective contracts.

Denied as stated.

217. The troop ships similar to those covered by the contract in controversy No. 182, constituted the most difficult class of work undertaken by Bethlehem for the Fleet Corporation.

Affirmed as substantially correct.

218. The said troop ships were not only more intricate in design and more difficult to build than either the tank or cargo ships which Bethlehem undertook to build under the contracts in controversy, but it was also contemplated that they would require very much longer to build than either said tank or cargo ships. (Exs. G-104, 109; Doc. Ev., pp. 205, 226.)

Affirmed.

219. In its proposal of December 19, 1917 (Ex. G-109), Bethlehem proposed to build the two troop ships subsequently included in Contract No. 182 (Ex. C), "on a straight cost and percentage basis" for a

fee of fifteen per cent. of cost. (Doc. Ev., pp. 227, 228).

Affirmed.

220. The fee of fifteen per cent. of cost proposed by Bethlehem as its compensation for the construction of the troop ships included in Contract No. 182 (Ex. C) was unacceptable to the Fleet Corporation and a fee of ten per cent of actual cost was agreed upon, said cost to exclude any allowance for Federal taxes. (Ex. G-118; Doc. Ev., p. 261; Contract No. 182, Articles 17, 19).

Affirmed.

221. By letter, dated December 14, 1917 (Ex. G-107), Bethlehem offered to construct Hulls Nos. 150, 151, 153 and 170 subsequently included in Contract No. 191, upon a lump-sum basis (Doc. Ev., p. 216).

Denied. The offer was on a lump-sum basis plus wage increases.

222. By letter, dated December 14, 1917 (Ex. G-43), Bowles replied to Bethlehem's proposal of December 14, 1917 (Ex. G-107), as follows:—

> "The Fleet Corporation has received your letter of December 14th in regard to Hulls Nos. 150, 151, 153 and 170 at the Union Iron Works building for your own account and which were requisitioned by the Fleet Corporation under its order of August third.
>
> "The Corporation notes that, having been invited to submit a price for the completion of these vessels in accordance with the original specifications under which you had begun them,

you now renew the offer originally made October 26, 1916, to complete these ships at a price of $205.00 per d. w. ton.

"The proposition as originally made was unsatisfactory to the Fleet Corporation and considered to be in excess of the just compensation which the law requires.

"You are now informed that the Fleet Corporation has decided to award you, as just compensation and a reasonable price for the completion of these vessels, actual cost plus ten per cent; with the understanding that the vessels shall meet the full military requirements; that the plans are to be approved by Lloyds and the vessels subject to Lloyds' survey, and also satisfactory to and to pass the inspection of the United States Steamboat Inspection Service for war-zone requirements."

Affirmed.

223. Under date of October 9, 1918, Piez addressed the following letter to the Board of Trustees of the Shipping Board relating to the troop ships subsequently included in Contracts Nos. 340 and 465. (Ex. B-6, Doc. Ev., p. 494):

"This contract has been executed by both parties and is awaiting formal approval by the Board.

"The reason the contract was let to the Sparrows Point plant of the Bethlehem Shipbuilding Corporation is that, that plant is one of the few in our country properly equipped and organized to construct the intricate troop ships.

"This decision was reached after a very careful study of the capabilities of our shipyards, the contracts then in existence with them and the possibility of getting the troop ships in time to make them most useful.

"Similar contract was made with the New York Shipbuilding Corporation after the same sort of investigation, and with Bethlehem Shipbuilding Corporation, Ltd., at Alameda.

"The troop ship is of a new design and the cost thereof is a matter only of estimate. There is no precedent to guide us. Not any of the contractors would agree to build the ships on a lump-sum basis. It was therefore necessary for us to place the contract on a cost and fee basis. The preliminary estimates showed that the ships would probably cost $4,160,000 each. We negotiated with the contractor and procured his consent to a fee of $320,000 per ship which is approximately 7½% of which we thought the ship would cost, but we wish to have some incentive on the contractor's part to holding the cost down. The best device that we have found for that purpose, is to fix an estimated basis cost satisfactory to ourselves and give the contractor a share in savings, if the actual cost be less than the estimated basis cost.

"In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.

"We discussed this matter with the Board at the time the commitments were made last Spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent.

"In the contracts now awaiting approval the basis cost is stated at $4,160,000, which is Bethlehem's estimate; and there is a provision that the basis cost might be revised after we had had an opportunity of making a fuller investigation.

"There is submitted herewith, a memorandum dated October 2nd, from the Manager of the Division of Steel Ship Construction showing in outline how their investigation was made. To that memorandum there is attached a detailed estimate submitted by the shipbuilder for similar ships to be built at Alameda. The total estimate cost of those ships is stated to be $4,464,100. Mr. Cox estimates that the proper *bare cost* of the Sparrow's Point ship should be $3,950,000. Based on this bare cost, if we were to follow out our plan for fixing the estimated base cost to be inserted in the contracts, the said estimated basis cost would be $4,443,500. This is considerably in excess of the shipbuilder's estimated basis cost, and we therefore desire the contract as submitted to be approved.

"These figures mean that if the ships are constructed for the bare cost as shown by our own figures and those of Newport News Shipbuilding and Dry Dock Company the contractor will re-

ceive in addition to its $320,000 fee, one-half of the difference between $3,950,000, and $4,160,000, to wit, $210,000 or a total of $425,000.

"There was no separate estimate made of the Sparrows Point Ships because they are identical with the Alameda ships.

"The fee paid in the Alameda contract is $300,000 instead of $320,000 for the Sparrows Point ships, because we are supplying all of the funds necessary to build the former yard. We believe that the contractor is entitled to a higher fee where it is supplying its own yard and equipment."

Affirmed.

224. With respect to said troop ships subsequently included in the limited "half-savings" Contracts Nos. 340 and 465, Bethlehem, prior to October, 1918, had submitted to the Fleet Corporation, detailed estimates of cost similar to the detailed estimates made in normal times for a new type of construction (Ex. B-6, Doc. Ev., p. 495; R., p. 861).

Affirmed. These ships were all west coast ships.

225. The "bare cost" referred to in the said letter addressed by Piez to the Board of Trustees of the Shipping Board under date of October 9, 1918 (Ex. B-6) was intended to represent the minimum price at which it would be possible for Bethlehem to complete the troop ships there referred to (R., pp. 861-2).

Denied. Not supported by evidence.

226. With respect to the troop ships referred to in the said letter addressed by Piez to the Board of Trustees of the Shipping Board under date of October 9, 1918, (Ex. B-6) it was contemplated by the Fleet Corporation that it would not be possible for Bethlehem to effect any "savings" against the respective "bare cost" estimates there set forth (R., pp. 861-2).

Denied. The exhibit seems to show the contrary.

227. With respect to the troop ships subsequently included in Contract No. 465 (Ex. C), it was contemplated by the Fleet Corporation that Bethlehem's total compensation per ship would not exceed eleven (11%) per cent of the base price of $4,160,000.00 designated in said contract.

Affirmed.

228. Thirty-two cargo ships under construction at the shipyards of the American Shipbuilding Company were requisitioned by the Government in August, 1917. Subsequently the Fleet Corporation entered into contracts with that Company providing for the construction of one hundred and seventy-six additional cargo ships for lump-sum prices, said contracts being similar in form to the contract, a copy of which appears as Exhibit G-196.

Affirmed.

229. Under date of October 2, 1918, Charles Schwab, who was then Director General of the Fleet Corporation, addressed the following letter to Edward N. Hurley, Chairman of the Shipping Board, relating to the said contracts between the Fleet Corporation and the American Shipbuilding Company (Ex. G-160, Doc. Ev., p. 492):

"Last week Mr. Farr sent me a copy of the annual report of his Company showing the profits which they had made during the fiscal year ending June 30, 1918, to be, approximately, 80% net profit on their outstanding common stock after setting aside large sums for war taxes and a moderate amount of depreciation.

"I immediately sent for Mr. Farr and demanded that he consent at once to a reduction in price on all of his contracts. He claimed that the large profits were made out of the commandeered ships and that only a few of his direct contract ships had been completed and delivered during the fiscal year covered by the report. I pointed out that this argument had little weight because his contract ships were more expensive to us than the commandeered ships and that his material and labor protections were such that very likely during the coming year his Company would make a great deal more than they did during the past year. His Company had contracts for a total of 176 ships in addition to 32 commandeered ships. The total program exceeds 675,000 tons. If the shipbuilding company were to make as much per ton as they, apparently, made during the preceding year they would have a net profit of something in excess of $20,000,000 on outstanding common stock issue of about $7,800,000. It is Mr. Farr's expectation that the entire program will be completed before the end of 1919.

"The price fixed in the contracts between the American Shipbuilding Company and the Fleet Corporation was agreed to only after extended

negotiations and as to the last contract made in May, 1918, the price was fixed after extended conferences, not only with Mr. Farr, but with all of the other lake shipbuilders, and was consented to by me only upon the assurance by all of them that the price was a reasonable one.

"Mr. Farr demurred at making any reduction, so that, acting on Mr. Cuthell's advice, I told him that we would amend all his contracts so as to limit his Company to what we considered to be 'just compensation.'

"Mr. Farr then agreed that he would execute binding agreements modifying all his contracts so that in no event would his Company make in excess of 10% profit. All Federal taxes are to be paid out of the 10% profit. He likewise agreed that his Company would absorb all the $1,200,000 for plant extension which we approved in May and two-thirds of which we were to have absorbed in the price of the last contract ships.

"I think that this readjustment is a fair one and that it will prove an object lesson to any other contractors who think that they can take advantage of us to obtain excessive prices for ships.

"I figure that this reduction in price will save in the neighborhood of $12,000,000."

Affirmed.

230. At the time of the negotiations relating to the contracts in controversy, approximately ten per cent of actual cost was regarded as affording just

and reasonable compensation for ship construction undertaken for the Fleet Corporation under cost-plus contracts.

Denied. Not supported by the evidence when so broadly stated.

231. At the time of the negotiations relating to the contracts in controversy, approximately ten per cent of actual cost was regarded as affording just and reasonable compensation for ship construction undertaken for the Fleet Corporation under lump-sum contracts.

Denied. See 230.

232. At the time of the negotiations relating to the contracts in controversy, ten per cent., or approximately ten per cent of actual cost, was regarded as affording just and reasonable compensation for the most difficult class of ship construction undertaken for the Fleet Corporation under the "half-savings" form of contract.

Denied. See 230.

233. Under the terms of the contracts in controversy, all additional plant facilities required by Bethlehem for the construction of the ships in controversy were to be paid for by the Fleet Corporation. Each of said contracts also provided that the Fleet Corporation would from time to time advance such sums as might be necessary to constitute and to keep constituted a fund from which to finance the work of constructing the ships to be constructed under said contract, to provide for payments to be made for materials, and for wages and salaries of

persons employed upon said work (see Contracts, Article 15).

Denied. Not supported by the evidence.

234. The estimates of cost designated as base prices in the respective contracts in controversy, the actual cost and actual base cost, (*i. e.*, actual cost exclusive of the amounts representing wage rate increases and the cost of changes and extras), of the respective ships covered by said contracts are as shown by Exhibits "A" and "B" attached to the Government's brief.

Affirmed.

235. As shown by Exhibit B-32, the "savings" with respect to Hulls Nos. 150, 151, 153 and 170, completed August 24, 1918, July 2, 1918, September 30, 1918, and May 8, 1919, respectively averaged approximately $672,000.00 per ship, while the returned base cost of direct labor amounted to approximately $604,000 per ship. The "savings" with respect to said ships not only exceeded the total returned base cost of direct labor but amounted to over eighty-eight per cent, of the total returned base cost of labor, operating expense and administrative and general expense, including depreciation.

Affirmed.

236. As shown by Exhibit B-32, the "savings" with respect to Hulls Nos. 215 and 216 completed May 27, 1919, and June 30, 1919, respectively, averaged approximately $644,000 per ship, or approximately $199,000 in excess of $444,997.87, representing the total returned base cost of direct labor for each ship, and approximately $13,000 in excess of

the total returned base cost per ship of direct labor, plant operating expense, administrative and general expense, and depreciation.

Affirmed.

237. The average "savings" with respect to the six tankers of approximately 9,100 deadweight tons constructed at Fore River under Contracts Nos. 183 and 229, amounted to approximately $398,000 per ship, while the returned base cost of direct labor averaged approximately $444,000 per ship (Ex. B-32).

Affirmed.

238. The total "savings" with respect to all of the tank and cargo ships in controversy amounted to approximately $26,759,000, while the returned total base cost of direct labor for said ships amounted to approximately $29,775,000.

Affirmed.

239. Subsequent to the completion of the ships in controversy the Fleet Corporation requested Bethlehem to explain and justify the estimates of cost designated as base prices in the respective contracts in controversy, and the enormous discrepancies between such estimates and the respective actual base costs.

Affirmed.

240. In reply to such requests, the Fleet Corporation was at first advised by representatives of Bethlehem that its original estimates of cost with respect to the contracts in controversy had been made upon the backs of envelopes, or on scratch

paper, and were no longer available (R., pp. 509-15, 534-5, 541-2, 796-800, 806).

Denied, because as stated it is not supported by the evidence.

241. By letter dated January 17, 1927 (Ex. G-32), Government counsel addressed a letter to Bethlehem counsel, reading in part as follows:

> "Estimates of Cost for Contract Ships.
>
> "Request is made for all figures, reports, working papers and other data used by Bethlehem Shipbuilding Corporation, Ltd., as a basis for the estimates of actual cost submitted with the proposals which resulted in contracts numbered 177, 178, 179, 182, 183, 184, 191, 196, 226, 230, 299, 300, 301, 312, 313, 314, 340, 465 and 4989."

Affirmed.

242. By letter dated March 22, 1927 (Ex. G-33) Bethlehem counsel replied to said letter of January 17, 1927 (Ex. G-32) as follows (Ex. G-33):

> "Referring to Mr. Parker's letter of January 17th, requesting certain information * * * estimates of cost for contract ships. We have and will furnish the working papers used in making these estimates, but these will not show estimates of cost in detail as requested."

Affirmed.

243. As representing its alleged compliance with its promise to furnish the working papers used in making the estimates submitted in the proposals

resulting in the contracts in controversy, Bethlehem during August, 1927, submitted to Government counsel a photostatic copy of the chart (Exs. G-34, 34½), without offering any explanation or information as to the manner in which the chart prices had been determined (R., pp. 118-119).

Affirmed.

244. Under date of January 16, 1928, Government counsel addressed the following letter to Bethlehem counsel (Ex. G-35):

> "Several months ago you furnished us with a diagram or chart which I understand was represented by you to be the only working paper used by Bethlehem in making its various estimates of cost for the contract ships involved in the above controversy.
>
> "Since then, as you know, I have on several occasions endeavored to ascertain whether or not Bethlehem would be willing to furnish us with an explanation of the manner in which this diagram or chart had been used in making the estimates in question as well as an explanation of the following notation thereon; 'June, 1922.' Will you please advise us as to Bethlehem's final position with respect to this explanation."

Affirmed.

245. Under date of January 18, 1928, Bethlehem counsel replied to Government counsel as follows (Ex. G-36):

> "I have your letter in which you ask whether we would be willing to furnish you with an ex-

planation of the diagram or chart used in making up the estimates for the original contract ships.

"As I have told you, this chart was made up by Harry Brown, who was at the time technical manager of Bethlehem Shipbuilding Corporation, and had previously been vice-president of the Fore River Shipbuilding Co., and its successor, the Fore River Shipbuilding Corporation. Whatever working papers he had in making up his figures have been destroyed, and even if they were in existence would probably be unintelligible to anyone but himself. Therefore, your request amounts in substance to a request that we furnish you in advance of the trial with a statement of what Mr. Brown will testify to. In my experience this is rather an unusual request, but I am quite willing to furnish you a copy of his statement as given to us on condition that you will agree that this is to be considered as a document produced at the call of the other side, and that in the event Mr. Brown is unavailable as a witness at the trial, his statement may be offered in evidence by either party as an explanation of the chart, with the same effect as if it were a part of the chart itself."

Affirmed.

246. Under dates of June 22 and 29, 1928, respectively, Bethlehem counsel submitted to Government counsel an alleged explanation of the chart, copies of which "explanation" appear as Exhibit G-155. Said "explanation" was furnished in pur-

suance of the understanding set forth in a letter dated June 29, 1928 (Ex. G-174), addressed by Bethlehem counsel to Government counsel reading in part as follows:

> "I am handing you herewith this statement in explanation of the graph or chart which was the basis of the estimates of cost on the contract ships.
>
> "*I am furnishing this in the hope that it may facilitate your work of preparation and more narrowly define the issue on the allegation of fraud.*
>
> "It is understood that this paper is not to be used by either of us as substantive evidence, although you are at liberty to use it in cross-examination of Mr. Brown to the same extent as you might use a signed statement for that purpose. * * *"

Affirmed.

247. Under date of October 26, 1928, counsel for the Government addressed a letter to counsel for Bethlehem, a copy of which appears as Exhibit G-37, reading in part as follows:

> "In connection with Mr. Harry Brown's description of his method of arriving at the costs delineated on his graph, information is requested as to whether or not Mr. Brown used the cost data of any hulls other than 253-4 and 158-9. If Mr. Brown did use the cost data of other hulls, information is requested as to which hulls were so used and what the data was in connection with those hulls. Information is also

desired as to whether Mr. Brown applied the same factors to the data on these other hulls as he applied to Hull 253 or whether he used other factors and, if so, his method of arriving at those factors."

Affirmed.

248. By letter dated October 27, 1928, a copy of which appears as Exhibit G-38, counsel for Bethlehem replied as follows:

"Answering your letter of October 26th:

"(1) As explained in Mr. Brown's memorandum the only hulls which he considered in arriving at his estimate were 253-254, 158-159."

Affirmed.

249. By letter dated July 6, 1928, a copy of which appears as Exhibit G-21, Government counsel requested Bethlehem to explain the discrepancy between Brown's alleged estimate as to the cost of all materials required for the construction of a tanker of 9,100 deadweight tons, as appearing in Exhibits G-154-155, and the actual cost of such materials with respect to Hulls Nos. 1376 to 1381, inclusive, built under Contracts Nos. 183 and 299.

Affirmed.

250. By letter dated August 8, 1928, a copy of which appears as Exhibit G-22, Bethlehem replied to the foregoing request as follows:

"With reference to Mr. Brown's request in Item 9 of his letter for 'explanation of the discrepancy between Brown's estimate as to the cost of all material required for the construc-

tion of the tanker of 9100 d. w. t. and the actual cost of such materials with respect to Hulls 1376 to 1381, inclusive,' we do not think that we should be asked to furnish information of this character or that it is information which will be of any assistance to Mr. Brown in the preparation of his case, particularly in view of the fact that if any explanation of any such discrepancy becomes material, it will be so as a matter to be shown as a part of our case rather than as any part of the Government's case."

Affirmed.

251. By letter dated September 21, 1928, a copy of which appears as Exhibit G-176, Government counsel requested Bethlehem to furnish a list of the material items with their respective prices alleged to have been considered by Brown in arriving at his factor of increase for material other than that covered by Job 12, in connection with his alleged "explanation" presented by Exhibits G-154-155.

Affirmed.

252. By letter, dated September 25, 1928, a copy of which appears as Exhibit G-177, Bethlehem replied to the foregoing request as follows:

"8. Request for list of items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12.

"No record of such items and their prices has been preserved."

Affirmed.

253. The "explanation," copies of which appear as Exhibits G-154, -155, represented the first explanation made to the Fleet Corporation or the Government as to the alleged methods employed by Bethlehem in determining its estimates for the ships in controversy.

Affirmed.

254. Until the previous hearing before Justice Roberts, no explanation was offered for the fact that the estimates originally submitted by Bethlehem were substantially in excess of the chart figures, and it was not until such hearing that this discrepancy was admitted by Powell to represent an allowance "for trading purposes" arbitrarily added by him to the figures furnished to him by Brown (R., pp. 732-4).

Affirmed.

255. In submitting the "explanation" (Exs. G-154-155) it was understood by all parties concerned that it was intended and offered as an explanation of the methods alleged to have been employed by Brown in plotting the total cost and per ton lines, including the East Coast cargo line, as such lines now appear upon the chart (Ex. G-34½).

Denied. The evidence does not disclose what all parties understood.

256. The "explanation" (Exs. G-154-155) is not a true explanation of the manner in which the chart (Ex. G-34½) was prepared.

Denied, as stated.

257. The chart (Ex. G-34½) was not based upon the cost analysis referred to in the "explanation" (Exs. G-154-155).

Denied, as stated.

258. Exhibits G-154-155 represent a fictitious "explanation" which was originated by Brown subsequent to his re-employment by Bethlehem in October, 1924, in an attempt to justify the estimates designated as base prices in the respective contracts in controversy.

Denied. The evidence does not support this request.

259. In order to build up his alleged estimates to the chart prices in connection with the explanation presented in Exhibits G-154, -155, it was necessary for Brown to disregard the proper basis of the "estimated actual costs" to Bethlehem which were supposed to be designated as base prices in the respective contracts in controversy, and to inflate such estimates by the use of improper factors and figures, the inclusion of improper allowances, and by mathematical mistakes.

Denied. The evidence does not support this request.

260. Bethlehem has failed to explain the true manner in which the chart (Ex. G-34½) was actually prepared.

Denied. See Brown's testimony.

261. Bethlehem has failed to explain the true basis of the estimates submitted to it by the Fleet Corporation.

Denied. See Brown's testimony.

262. No justification has been offered for the discrepancy between the original estimates submitted by Bethlehem, or the estimates finally agreed upon, and the actual returned cost of the respective ships in controversy.

Affirmed as a request for finding of fact, but regarded by the Master as immaterial.

263. No explanation has been offered for the discrepancy between the original estimates submitted by Bethlehem or the estimates finally agreed upon and the actual returned cost of the respective ships in controversy.

Affirmed, but see 262.

264. No justification has been offered for the original estimates submitted by Bethlehem or the reduced estimates designated as base prices in the respective contracts in controversy.

Affirmed, but see 262.

265. In submitting its estimates for the respective tank and cargo ships in controversy, Bethlehem made no use of the cost data available to it relating to the ships previously completed at its respective shipyards (Ex. G-38).

Denied. The evidence is the contrary.

266. The estimates of cost submitted by Bethlehem and designated as base prices for the respective tank and cargo ships in controversy were such as to result in very substantial savings, regardless of whether or not it was able to increase efficiency of management or labor during the period required for the construction of said ships, as com-

pared with the efficiency existing at the time of the negotiations relating thereto.

Denied. The evidence does not support this request.

267. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the estimates of cost submitted by Bethlehem and designated as base prices for said ships were such as would result in very substantial "savings" regardless of whether or not Bethlehem was able to increase efficiency of management or labor during the period required for the construction of said ships, as compared with efficiency existing at the time of said negotiations.

Denied. The evidence is the contrary.

268. The estimates of cost submitted by Bethlehem and designated as base prices for the respective tank and cargo ships in controversy, were not such as to require any increase in efficiency, as compared with efficiency existing at the time of the negotiations relating to said ships, in order to enable Bethlehem to participate in any substantial "savings".

Denied. The evidence does not support this request.

269. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the estimates of cost submitted by Bethlehem and designated as base prices for said ships were not such as to require any increase in effi-

ciency, as compared with efficiency existing at the time of the negotiations relating to said ships, in order to enable Bethlehem to participate in any substantial "savings."

Denied. The evidence is the contrary.

270. The estimates of cost submitted by Bethlehem and designated as base prices for the respective tank and cargo ships in controversy were not such as to make the amount of "savings," if any, substantially commensurate with economies resulting from increased efficiency of management and labor.

Denied. See 268.

271. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the estimates of cost submitted by them and designated as base prices for said ships were not such as to make the amount of "savings," if any, substantially commensurate with economies resulting from increased efficiency.

Denied. See 270.

272. Neither the original estimates submitted by Bethlehem nor the reduced estimates designated as base prices for the respective tank and cargo ships in controversy were such as to require Bethlehem to assume the risk of the possible occurrence of strikes, labor shortage, increases in freight rates or material costs, or other similar contingencies beyond its control, insofar as its participation in "savings" was concerned.

Denied. Not justified by the evidence.

273. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the original estimates submitted by them, as well as the reduced estimates designated as base prices for said ships were not such as to require Bethlehem to assume the risk of the possible occurrence of strikes, labor shortage, increases in freight rates or material costs, or other similar contingencies beyond its control, insofar as its participation in "savings" was concerned.

Denied. Not justified by the evidence.

274. The estimates of cost designated as base prices in the respective contracts in controversy, did not represent the lowest prices which, according to the best judgment of Powell and Brown, would afford Bethlehem a reasonable opportunity to effect "savings" as a result of its efforts and ability to increase efficiency of management and labor, as compared with average efficiency then existing.

Denied as irrelevant. The word "savings" means nothing in the request as stated.

275. Neither the original estimates submitted by Bethlehem nor the reduced estimates named as base prices for the respective tank and cargo ships in controversy represented fair and reasonable estimates of probable approximate cost of said respective ships, for use in connection with the "half-savings" form of contract.

Denied. The evidence is to the contrary.

276. Powell and Brown knew that the original estimates submitted by them for the respective tank

and cargo ships in controversy, as well as the reduced estimates finally agreed upon, were substantially in excess of any fair and reasonable estimates of probable cost for use in connection with the contracts in controversy.

Denied. The word "substantially" does not fairly reflect the evidence.

277. Powell and Brown knew that the estimates of costs designated as base prices for Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, were substantially in excess of any fair and reasonable estimates of the probable cost of said ships, for use in connection with the "half-savings" form of contract.

Denied. See 176.

278. The "savings" with respect to the tank and cargo ships in controversy, resulted from the gross and improper inflation of the estimates of cost designated as base prices in the respective contracts.

Denied. This is not justified by the evidence.

279. There is no evidence that the cost of construction of the respective tank and cargo ships in controversy was reduced as a result of the "bonus-for-savings" provisions of the respective contracts.

Affirmed.

280. Schwab became Director General of the Fleet Corporation on or about April 16, 1918, and remained as such until December, 1918. As Director General, Schwab was the executive head of the Fleet Corporation. During the years 1916 to 1919

inclusive, Schwab was also Chairman of the Board of Directors of the Bethlehem Steel Corporation (R., pp. 628-9, 892, Ex. G-1, Bill, par. 26).

Affirmed.

281. The dates of delivery by Bethlehem to the Fleet Corporation of the ships in controversy are as shown by Exhibit G-3.

Affirmed.

282. In entering into the contracts in controversy, the Fleet Corporation acted as the representative and upon behalf of the United States Government.

The Fleet Corporation contracted as principal, although it was, at the time, a publicly acknowledged agency of the United States Government.

CONCLUSIONS OF LAW

1. The contracts in controversy are unenforceable against either the United States of America or the United States Shipping Board Emergency Fleet Corporation.

Denied.

2. The provisions of the respective contracts in controversy relating to the "fixed sum for profit" to be paid to Bethlehem are unenforceable against either the United States of America or the United States Shipping Board Emergency Fleet Corporation.

Denied.

3. The provisions of the respective contracts in controversy providing for Bethlehem's participation in "savings" are unenforceable against either the United States of America or the United States Shipping Board Emergency Fleet Corporation.

Denied.

4. Bethlehem is entitled to retain out of the moneys paid to it on account of the respective contracts in controversy an amount representing the actual cost of construction of the respective ships covered by said contracts, said actual cost being as shown by Exhibit "A".

Affirmed.

5. The United States of America is entitled to receive from Bethlehem an amount representing all sums paid to it on account of the respective contracts in controversy in excess of the actual cost of construction of the respective ships covered by said contracts, said actual cost being as shown by Exhibit "A".

Denied.

6. If it should be held that Bethlehem is entitled to any compensation in addition to the actual cost of construction of the ships covered by the contracts in controversy, said compensation should not exceed the "fixed sum for profit" designated in the respective contracts.

Denied.

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED ON BEHALF OF BETHLEHEM SHIPBUILDING CORPORATION, LTD., ET AL.

FINDINGS OF FACT

1. On August 3, 1917 the Fleet Corporation requisitioned all merchant vessels over 2,500 tons then under construction in the various Bethlehem yards.

Affirmed.

2. Sometime in the fall of 1917, Powell, Vice-President of Bethlehem Shipbuilding Corporation, having been to'd that Bethlehem would be required to build additional vessels for the Fleet Corporation, instructed Brown, Bethlehem's Technical Manager, to be prepared to submit estimates on such types and sizes of vessels as Bethlehem might be required to build.

Affirmed.

3. At that time conditions both as to labor, material, and transportation were such that it was impossible to make an accurate estimate of cost.

Affirmed.

4. In normal times, when labor and transportation conditions were stable, and it was possible to obtain firm quotations for material, it had been Bethlehem's practice to prepare estimates in considerable detail. This practice had been abandoned and the estimating department disbanded because conditions were such

that it was impractical and useless to prepare estimates in the usual way.

Affirmed.

5. Following Powell's instructions, Brown sometime in November or early December, 1917, prepared in the form of a graph an estimate of the probable cost of tankers and cargo vessels of any size which Bethlehem might be called upon to build.

Affirmed.

6. Up to that time Bethlehem had no information as to the number, type or size of vessels, except that it was supposed that they would be largely tankers and troop ships, because these were the types of vessels which only experienced ship builders could build.

Affirmed.

7. This estimate was based on the actual cost of a 9,100 ton tanker recently completed at Fore River, and was arrived at by applying to the labor and material costs on this tanker such factors of increase as Brown thought reasonable to cover the increase during the period of construction. He then applied the same factors of increase to the actual cost of each of two 14,950 ton tankers recently completed at Sparrows Point, having first ascertained that the labor and material costs per light weight ton were substantially the same as on the 9,100 ton tanker at Fore River, and having thus determined the approximate cost of tankers of substantially different size, he plotted a curve to represent the approximate cost of a tanker of any size to be built on the East Coast. To arrive at the approximate cost of tankers to be

built on the West Coast, he added five per cent. to cover the difference in labor rates and in the delivered price of materials on the West Coast. The approximate cost of cargo vessels was determined by deducting from the cost of tankers a percentage, varying with the size of the vessel, which from his experience he believed represented the difference between the cost of a cargo vessel and a tanker of the same size.

Affirmed.

8. Brown was an experienced and competent estimator. The method which he used to arrive at his estimates of cost was a reasonable one and the result was as accurate as could be expected under the uncertain conditions prevailing at the time. (Brown pp. 376, 343; Sanford pp. 623-624.)

Affirmed.

9. Brown's estimates were fairly and honestly made.

Affirmed. There is no evidence to the contrary.

10. On December 12, 1917, Powell was instructed by the Fleet Corporation to submit a program for the construction of additional vessels up to the capacity of Bethlehem's yards.

Affirmed.

11. On December 13, 1917, in response to this instruction, Powell wrote to the Fleet Corporation, submitting several alternative programs. In this letter he said:

> "Because of the unprecedented conditions surrounding the Labor and Material Market, it

is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on December 6th, 1917, by the Navy Department and this Company. The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as today existing of Ten Percent. (10%) of the present estimated cost of construction."

Affirmed.

12 The form of contract suggested by Powell, and eventually adopted, was a desirable one from the standpoint of both parties. It was preferable to the straight cost-plus contract, because it provided an incentive to the contractor both to keep down the cost and expedite the work. In order to give this incen-

tive it was essential that the estimated or base cost should be sufficiently liberal to afford a reasonable opportunity to the contractor to cut under it.

Affirmed.

13. Representatives of the Fleet Corporation were familiar with, and approved of, this form of contract. They recognized also that, in order to provide the proper incentive, the base cost must be sufficiently liberal, and, in connection with later contracts, adopted a formula for arriving at the base cost by adding to the estimated amount of so-called bare cost an amount to provide this incentive.

Affirmed.

14. The estimated or base cost named in the contracts was not intended to represent a close estimate of the bare cost of construction, but was intended to be sufficiently liberal to provide an incentive for efficiency, and was so understood and accepted by representatives of the Fleet Corporation.

Affirmed.

15. At a conference between Powell and Admiral Bowles, Manager of the Division of Steel Ship Construction of the Fleet Corporation, on December 18, 1917, a definite program was agreed upon, and Powell was instructed to submit proposals at once.

Affirmed.

16. On December 19, 1917, Powell submitted a definite proposal, based on the form of contract suggested in his letter of December 13.

Affirmed.

17. The estimated base cost named by Powell in this letter was based on Brown's estimates with the addition of approximately 5%, which included an allowance of $2.50 per ton for some high priced steel which Bethlehem had on hand or under contract and proposed to use, but which Brown had not taken into consideration.

Affirmed.

18. On January 3, 1918, there was a conference between Bowles and Radford representing the Fleet Corporation, and Powell and Brown representing Bethlehem, at which Powell's proposal of December 19 was considered. After considerable negotiations, the contracts were closed substantially on the basis of Brown's estimates.

Affirmed.

19. Bowles was an experienced naval constructor. He had been for some years President of Fore River Shipbuilding Company. He was thoroughly competent to check Bethlehem's estimates. He had as his first aide Daniel H. Coxe, an experienced marine architect, who was probably present during part of the conference of January 3.

Affirmed.

20. The dealings between the contracting parties were at arm's length, and the estimated base costs were arrived at by a process of barter and trade. (Radford p. 1000.)

Affirmed.

21. Following the conference of January 3, Bowles and Radford addressed a memorandum to

Piez, Vice-President and General Manager of the Fleet Corporation, recommending the awarding of the contracts. In this memorandum they said:

"January 5, 1918.

Memorandum for the Vice President & General Manager,

Bethlehem Shipbuilding Corporation, Ltd.:

We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your sig-

nature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that Corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,

Division of Steel Ship Construction.

G. S. Radford, Manager,
Contract Division.

Enclosures

Affirmed.

22. Before definitely awarding the contracts Piez checked the prices and in the case of contracts for the larger tankers compared the combined estimated cost and fixed fee with the price at which the Fleet Corporation had awarded a lump sum contract for similar vessels to another shipbuilder.

Affirmed.

23. The estimated base costs used in the contracts represented reasonable estimates of probable cost.

Affirmed.

24. There was no misrepresentation or fraud on the part of Bethlehem in the negotiation of the contracts.

Affirmed.

25. With the exception of the 5,100 ton cargo boats built under Contract No. 314, the average cost to the Fleet Corporation of the cargo and tank vessels of each type and size built by Bethlehem under the contracts in suit, including the fixed fee and half-savings, is less than the average price paid by the Fleet Corporation to other shipbuilders under both lump sum and cost plus contracts for vessels of substantially similar type and size constructed during approximately the same period. (Brown pp. 378-379, 402.)

Denied as stated.

26. The contracts were fairly negotiated and were agreed to by the contracting parties as the best that could be made under the circumstances.

Affirmed.

27. Charles M. Schwab served as Director General of the Fleet Corporation from April 16 until December 12, 1918. During this period he was not an officer, and after April 25, 1918, he was not a director of Bethlehem Shipbuilding Corporation, Ltd. He was at no time a member of the Board of Trustees of the Fleet Corporation.

Affirmed.

28. Schwab accepted the position of Director General at the earnest solicitation of the President of the United States, with the definite understanding

that he would be relieved from any dealings between the Fleet Corporation and Bethlehem or any of its affiliated companies.

Affirmed.

29. The understanding was confirmed by letter addressed to the President and Trustees of the Fleet Corporation, in which Schwab requested that all business between the Fleet Corporation and Bethlehem, or any of its subsidiary companies, be handled entirely by such other officers or agents of the Fleet Corporation as the Trustees might designate. Following this letter the Trustees adopted a resolution that all contracts, after being approved by the Vice President and Secretary, should be submitted to the Board of Trustees for their approval.

Affirmed.

30. During the time he was Director General, Schwab scrupulously observed the conditions under which he accepted his appointment, and refrained from any dealings with Bethlehem. All such matters were handled by the Vice President, Piez, without consultation with or interference or advice from Schwab.

Affirmed.

31. Schwab took no part in the negotiation of the contracts either before or after he became Director General, and at the time he severed his connection with the Fleet Corporation he had no knowledge or means for determining what profit, if any, Bethlehem would realize under the half savings provision of the contracts. (Powell p. 641; Schwab p. 833.)

Affirmed as to Schwab's knowledge. The evidence does not show that Schwab had no means of knowledge had he desired to know.

32. Even if the Fleet Corporation had power to revise its own contracts by reducing the amount to be paid to the contractor, this power was never delegated to the Director General.

Affirmed.

CONCLUSIONS OF LAW

1. The contracts are valid and Bethlehem is entitled to be paid according to contract provisions.

Affirmed.

2. The wage schedule referred to in the West Coast contracts is the schedule promulgated by the Shipbuilding Labor Adjustment Board on November 4, 1917, exclusive of the War Service payment of ten per cent. authorized by the Fleet Corporation on December 10, 1917.

Denied. The applicable Wage Schedule includes the said War Service payment.

3. The wage schedule referred to in the East Coast contracts is the wage schedule in force on January 3, 1918, at the respective Navy Yards named in the contracts.

Affirmed.

4. The Fleet Corporation obligated itself in its individual capacity and not as agent of the United States, for the payments provided for under the contracts, and as such is liable in action at law.

and judgment should be entered against it for the amount found to be owing, together with interest.

Answered, that the Fleet Corporation is liable in action at law No. 11970 for the amount found to be due in the Report of the Master.

5. In the equity suit Bethlehem is entitled upon its counterclaim to a decree against the United States for the amount found to be owing.

Denied. The court has no jurisdiction to make such a decree.

EXCEPTIONS OF THE UNITED STATES OF AMERICA AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION TO THE REPORT OF THE SPECIAL MASTER AND REFEREE.

And Now, this 30th day of December, 1935, come THE UNITED STATES OF AMERICA and THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION and except to the Report of the Special Master and Referee in the following particulars, to wit:

1. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 92.

2. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 93.

3. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Find

ing of Fact No. 94. The statement of the Special Master and Referee that "The proposals were not confined to all materials at then existing prices", has no bearing upon the Request.

4. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 95.

5. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 96.

6. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 104.

7. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 105.

8. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 106.

9. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 107.

10. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 108.

11. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 110.

12. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 111.

13. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 112.

14. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 114.

15. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 116.

16. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 117.

17. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 121.

18. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 122.

19. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 125.

20. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 126.

21. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 127.

22. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 128.

23. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 129.

24. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 130.

25. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 133.

26. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 134.

27. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 135.

28. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 136.

29. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 137.

30. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 139.

31. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 140.

32. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 150.

33. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 153.

34. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 154.

35. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 155.

36. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 159.

37. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 160.

38. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 161.

39. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 162.

40. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 163.

41. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 164.

42. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 166.

43. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 167.

44. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 168.

45. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 169.

46. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 170.

47. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 171.

48. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 172.

49. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 173.

50. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 174.

51. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 175.

52. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 176.

53. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 177.

54. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 181.

55. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 189.

56. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 201.

57. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 202.

58. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 205.

59. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 210.

60. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 215.

61. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 216.

62. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 225.

63. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 226.

64. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 230.

65. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 231.

66. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 232.

67. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 233.

68. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 240.

69. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 255.

70. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 256.

71. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 257.

72. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 258.

73. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 259.

74. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 260.

75. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 261.

76. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 262.

77. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 263.

78. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 264.

79. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 265.

80. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 266.

81. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 267.

82. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 268.

83. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 269.

84. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 270.

85. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 271.

86. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 272.

87. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 273.

88. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 274.

89. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 275.

90. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 276.

91. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 277.

92. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 278.

93. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 282.

94. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 1

95. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 2.

96. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 3.

97. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 5.

98. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 6.

99. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 3 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

100. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 4 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

101. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 5 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

102. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 6 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

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116. To the affirmance by the Special Master and Referee of the Request for Conclusion of Law No. 1 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd. et al.

117. To the finding by the Special Master and Referee in answer to the Request for Conclusion of Law No. 4 submitted upon behalf of Bethlehem

Shipbuilding Corporation, Ltd. et al., to the effect that the Fleet Corporation is liable in action at law No. 11970 for the amount found to be due in the Report.

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tended to deceive the representatives of the Fleet Corporation." (Rep. p. 13.)

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123. To the statement of the Special Master and Referee that "Little more is needed than a reading of the testimony of Radford, who is the Government's witness, to impel the conclusion that the charge of fraud made by the Government against Bethlehem is without foundation." (Rep. p. 15.)

124. To the statement of the Special Master and Referee that "At the time these contracts were entered into, insofar as the evidence before the Master shows, Piez, Admiral Bowles, Radford and Cox had knowledge, or information available, from which knowledge could have been obtained, whereby to judge of the reasonableness, under all of the circumstances, of the estimated base price for the contract ships." (Rep. p. 22.)

125. To the statement of the Special Master and Referee that "The Government has not produced a word of testimony to prove that, had the Government representatives known exactly what the profit to Bethlehem under the contracts dated December 31, 1917 eventually would be, the contracts in question would not have been made because they could produce such profit. The Master must assume that, as the burden was upon the Government to prove this to be the fact in its attack upon the profits from the contracts, the failure of the Government to develop such evidence from Piez, Radford, Cox or Cuthell justifies the inference that had the effort been made the testimony would have proved the contrary, and that the Government's witnesses, if asked, would have testified that regardless of the profit, as the contracts represented the best price obtainable from Bethlehem for the building of the ships, the contracts would have been entered into." (Rep. p. 22.)

126. To the statement of the Special Master and Referee that "The evidence shows, and the Master finds, that the Fleet Corporation made the contracts with open eyes, although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its 'pound of flesh', and did so because of a realization of the necessity of attaining an objective with the shipbuilding program which, without Bethlehem, might not be possible." (Rep. p. 23.)

127. To the statement of the Special Master and Referee that "It is to be remembered, however, that Bethlehem was an old line shipbuilding com-

pany, carrying the burdens of idle invested capital over longtime periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes and other carrying charges. All of these, however, were charges incident to the standby service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it." (Rep. pp. 23-4).

128. To the statement of the Special Master and Referee that "The profits afforded to Bethlehem from these shipbuilding contracts are in large measure to be paid, of course, by Bethlehem's fellow taxpayers who supply the funds, Bethlehem contributing, no doubt, most of its 'bonus for savings' as originally anticipated by Powell (pp. 779-784). But, after all, without Bethlehem the World War might have lasted many months longer and the burdens upon these same taxpayers might thereby have been enormously increased." (Rep. p. 24.)

129. To the statement of the Special Master and Referee that "It is fair to assume, even without ref-

erence to Exhibit B-6, that prior to the Armistice information had been acquired by the Fleet Corporation concerning actual cost of the construction work on the contract ships by reason of the current audits for the Fleet Corporation of the Bethlehem contract work, from which a comparison with the estimated base cost could readily have been made." (Rep. p. 24.)

130. To the statement of the Special Master and Referee that "This power of cancellation was one of the reasons which induced Radford to accept the estimates in spite of his belief that the speculative chances for profit under the war conditions were more favorable to Bethlehem than against it. (Radford, R. 1002.)." (Rep. p. 25.)

131. To the statement of the Special Master and Referee that "The foregoing is interesting in that it shows that, in peace times, the Government contracts produced a greater profit to the shipbuilders than the war time contracts of Bethlehem here complained of. It also shows variations between estimates of ship costs and actual costs similar to those testified to by the witnesses as frequent in the industry. (Pp. 668-669.)" (Rep. p. 32.)

132. To the statement of the Special Master and Referee that "The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the 'base cost' of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they fixed the 'base cost' of all of

these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances (se G. 134, Doc. 391). (Rep. pp. 34-35.)

133. To the statement of the Special Master and Referee that "The evidence also disclosed that the 'educated guess' of Powell and Brown as to the 'base cost' for the contracts of December 31, 1917, produced a still less cost to the Government of ships built under these contracts than under the lump sum or cost plus contracts with other shipbuilders." (Rep. p. 35.)

134. To the statement of the Special Master and Referee that "The Master, for the reasons stated, finds that the charge against Bethlehem of fraud in the making of the contracts under consideration is without foundation upon this record, and that these contracts are valid, enforceable obligations, according to their terms, against the Fleet Corporation." (Rep. p. 36.)

CHARLES D. MCAVOY,
United States Attorney for the Eastern District of Pennsylvania.

JOSEPH J. BROWN,
Special Assistant to the Attorney General.
SOUTH TRIMBLE, JR.,
Solicitor, Department of Commerce.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board Emergency Fleet Corporation.

EXCEPTIONS OF BETHLEHEM SHIPBUILDING CORPORATION, LTD., TO THE PROPOSED REPORT OF THE SPECIAL MASTER AND REFEREE DATED DECEMBER 19, 1935.

Bethlehem Shipbuilding Corporation, Ltd., as defendant in the above-entitled suit in Equity No. 3315 and as plaintiff in the above-entitled action At Law No. 11970, excepts to findings and conclusions in the proposed Report of Special Master and Referee in said causes and to findings made or affirmed by the Special Master and Referee upon request for findings of fact and conclusions of law submitted on behalf of The United States of America and The United States Shipping Board Emergency Fleet Corporation as follows:

(1) To the finding on pages 37 and 38 of said Report in the first paragraph under the heading "As to the West Coast Contracts:" that the order of December 8, 1917 therein referred to was an order of the Wage Adjustment Board.

(2) To the finding, opinion or conclusion of the Special Master and Referee in the first complete paragraph on said page 38 that "the wage schedule applicable to the West Coast Contracts, as the schedule in effect January 3, 1918, included the ten per cent. war service bonus theretofore made effective in the West Coast Yards."

(3) To the conclusion stated in the third paragraph on page 44 of said Report that an allowance of interest on the amount found due to Bethlehem Ship-

building Corporation, Ltd., to be computed at the rate of 6% per annum, would not be justified.

(4) To the recommendation contained in the next following paragraph of said Report that interest be allowed upon the several items found due to said Bethlehem Shipbuilding Corporation, Ltd., from the due date for the payment thereof as set forth in said Report, computed at the average of the rates allowable on deposits by member banks of the Clearing House Associations of New York and Philadelphia, since said due dates, under the Rules of said Associations controlling interest rates, and to the recommendation or conclusion in the paragraph next thereafter following that during such periods, if any, when rates were not fixed by such Rules, the rate of interest to be applied shall be that fixed by the Rules next thereafter made effective, upon the ground that interest at the rates so computed upon the amounts found due to Bethlehem Shipbuilding Corporation, Ltd., is less than the amount to which it is entitled by reason of the withholding from it of said amounts, and that it is entitled to interest thereon at the legal rate of six per cent. per annum.

(5) To the finding or affirmance of the finding of fact No. 49 contained in the above-mentioned requests for findings of fact and conclusions of law.

(6) To the finding or affirmance of the finding of fact No. 50 contained in said requests.

(7) To the finding or affirmance of the finding of fact No. 52 contained in said requests.

(8) To the finding or affirmance of the finding of fact No. 89 contained in said requests.

(9) To the finding or affirmance of the finding of fact No. 124 contained in said requests.

(10) To the finding or affirmance of the finding of fact No. 174 contained in said requests.

(11) To the finding or affirmance of the finding of fact No. 178 contained in said requests.

(12) To the finding or affirmance of the finding of fact No. 179 contained in said requests.

(13) To the finding or affirmance of the finding of fact No. 180 contained in said requests.

(14) To the finding or affirmance of the finding of fact No. 185 contained in said requests.

(15) To the finding or affirmance of the finding of fact No. 264 contained in said requests.

Said Bethlehem Shipbuilding Corporation, Ltd., further excepts to the denial of, or failure to find or affirm, requests for findings of fact and conclusions of law submitted on behalf of said Bethlehem Shipbuilding Corporation, Ltd., as follows:

(16) To the denial of the finding of fact No. 25.

(17) To the failure to find or affirm the finding of fact No. 31 as requested.

(18) To the denial of the conclusion of law No. 2.

(19) To the failure to find or affirm the conclusion of law No. 4 as requested.

Dated January 13, 1936.

RALPH B. EVANS,
Attorney for Bethlehem Shipbuilding Corporation, Ltd.

EXCEPTIONS OF THE UNITED STATES OF AMERICA AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION TO THE REPORT OF THE SPECIAL MASTER AND REFEREE FILED FEBRUARY 7, 1936.

(Filed Feb. 25, 1936)

And now, this 25th day of February, 1936, come The United States of America and The United States Shipping Board Emergency Fleet Corporation and except to the Report of the Special Master and Referee filed on February 7, 1936, in the following particulars, to wit:

1. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 92.

2. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 93.

3. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 94. The statement of the Special Master and Referee that "The proposals were not confined to all materials at then existing prices," has no bearing upon the Request.

4. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 95.

5. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 96.

6. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 104.

7. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 105.

8. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 106.

9. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 107.

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13. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 112.

14. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 114.

15. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 116.

16. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 117.

17. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 121.

18. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 122.

19. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 125.

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31. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 140.

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68. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 240.

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122. To the statement of the Special Master and Referee that "The Master finds that the chart was prepared by Harry Brown as an evidence of his best guess as to costs and without fraudulent intent" (Rep. p. 14).

123. To the statement of the Special Master and Referee that "Little more is needed than a reading of the testimony of Radford, who is the Government's witness, to impel the conclusion that the charge of fraud made by the Government against Bethlehem is without foundation" (Rep. p. 15).

124. To the statement of the Special Master and Referee that "At the time these contracts were entered into, insofar as the evidence before the Master shows, Piez, Admiral Bowles, Radford and Cox had knowledge, or information available, from which knowledge could have been obtained, whereby to judge of the reasonableness, under all of the circumstances, of the estimated base price for the contract ships" (Rep. p. 22).

125. To the statement of the Special Master and Referee that "The Government has not produced a word of testimony to prove that, had the Government representatives known exactly what the profit to Bethlehem under the contracts dated December 31, 1917 eventually would be, the contracts in question would not have been made because they could produce such profit. . . The Master must assume that, as the burden was upon the Government to prove this to be the fact in its attack upon the profits from the contracts, the failure of the Government

to develop such evidence from Piez, Radford, Cox or Cuthell justifies the inference that had the effort been made the testimony would have proved the contrary, and that the Government's witnesses, if asked, would have testified that regardless of the profit, as the contracts represented the best price obtainable from Bethlehem for the building of the ships, the contracts would have been entered into" (Rep. p. 22).

126. To the statement of the Special Master and Referee that "The evidence shows, and the Master finds, that the Fleet Corporation made the contracts with open eyes; although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its 'pound of flesh', and did so because of a realization of the necessity of attaining an objective with the shipbuilding program which, without Bethlehem, might not be possible" (Rep. p. 23).

127. To the statement of the Special Master and Referee that "It is to be remembered, however, that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes and other carrying charges. All of these, however, were charges incident to the standby service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives

of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it" (Rep. pp. 23-4).

128. To the statement of the Special Master and Referee that "The profits afforded to Bethlehem from these shipbuilding contracts are in large measure to be paid, of course, by Bethlehem's fellow taxpayers who supply the funds, Bethlehem contributing, no doubt, most of its 'bonus for savings' as originally anticipated by Powell (pp. 779-784). But, after all, without Bethlehem the World War might have lasted many months longer and the burdens upon these same taxpayers might thereby have been enormously increased" (Rep. p. 24).

129. To the statement of the Special Master and Referee that "It is fair to assume, even without reference to Exhibit B-6, that prior to the Armistice information had been acquired by the Fleet Corporation concerning actual cost of the construction work on the contract ships by reason of the current audits for the Fleet Corporation of the Bethlehem contract work, from which a comparison with the estimated base cost could readily have been made" (Rep. p. 24).

130. To the statement of the Special Master and Referee that "This power of cancellation was one of the reasons which induced Radford to accept the estimates in spite of his belief that the speculative chances for profit under the war conditions were

more favorable to Bethlehem than against it (Radford, R. 1002)'' (Rep. p. 25).

131. To the statement of the Special Master and Referee that ''The foregoing is interesting in that it shows that, in peace times, the Government contracts produced a greater profit to the shipbuilders than the war time contracts of Bethlehem here complained of. It also shows variations between estimates of ship costs and actual costs similar to those testified to by the witnesses as frequent in the industry (pp. 668-669)'' (Rep. p. 32).

132. To the statement of the Special Master and Referee that ''The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the 'base cost' of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they fixed the 'base cost' of all of these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances (see G. 134, Doc. 391)'' (Rep. pp. 34-35).

133. To the statement of the Special Master and Referee that ''The evidence also disclosed that the 'educated guess' of Powell and Brown as to the 'base cost' for the contracts of December 31, 1917, produced a still less cost to the Government of ships built under these contracts than under the lump sum or cost plus contracts with other shipbuilders'' (Rep. p. 35).

134. To the statement of the Special Master and Referee that ''The Master, for the reasons stated,

finds that the charge against Bethlehem of fraud in the making of the contracts under consideration is without foundation upon this record, and that these contracts are valid, enforceable obligations, according to their terms, against the Fleet Corporation" (Rep. p. 36).

135. To the statement of the Special Master and Referee in the supplement to his report that "The testimony in the record justifies the conclusion that with or without adjustment, to reflect the difference in specifications, the cost to the Government of the vessels built under the Bethlehem contracts was less, for the value received, than the cost under contracts with other shipbuilders" (Sup. to Rep. p. 48).

136. To the dismissal by the Special Master and Referee of each and every of the exceptions filed by the United States of America and the United States Shipping Board Emergency Fleet Corporation to the report of the Special Master and Referee (Rep. p. 48).

CHARLES D. MCAVOY,
United States Attorney for the Eastern District of Pennsylvania.

JOSEPH J. BROWN,
Special Assistant to the Attorney General.
SOUTH TRIMBLE, JR.,
Solicitor, Department of Commerce.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board Emergency Fleet Corporation.

OPINION SUR EXCEPTIONS TO REPORT OF SPECIAL MASTER, &c.

(Filed June 3, 1938)

Dickinson, J.

There will be no charge made of undue haste in the disposition of these cases. The contract with which they concern themselves was signed in 1918. The Bill in Equity was filed to March Term 1925 and the actions at law are entitled as of December Term, 1925.

The Master was appointed in 1931, and made his report, in the sense of having prepared it, February 19th, 1932, but withheld it at the request of the United States and agreement of the Steel Company, until the filing date of February 7th, 1936.

The cause was not set down for hearing upon the Exceptions until May 16th, 1938. It is the duty of the Master to state that no part of this "lapse of time" is chargeable to him but has been to him "a matter of regret and concern".

There are two cases before us, the other actions brought having been disposed of. Of the remaining cases one is a Bill in Equity and the other an action at Law. The litigation began with the filing of the Bill. This was one to compel the defendant to disgorge averred unconscionable profits which it had received on a contract for the building of ships by the defendant for the United States Merchant Marine. This was promptly followed by the action at law in which the plaintiff seeks to recover from the

Shipping Board Corporation a claimed unpaid balance due it for performance of the same contract. Each controversy is thus over the same contract and the proceeding and action may be discussed as one claim and defense. The threatened length of the inquiry induced the parties to agree upon a procedural arrangement to shorten it so far as possible. This was to have the proceeding in Equity referred to a Special Master and for the parties to the action at law to waive a jury trial and refer the cause to a Referee under the Pennsylvania practice—the same person to act as Special Master and also as Referee.

The then Owen J. Roberts, Esq., (now Mr. Justice Roberts of the Supreme Court) was appointed by the Court as Special Master and agreed upon as Referee. Upon the retirement of Mr. Roberts, William Clarke Mason, Esq., succeeded him, and it is his report which is before the Court with exceptions. He will be referred to as Special Master. 379 Requests for Findings of Fact and Conclusions of Law were submitted to the Master and answered by him. The Exceptions to his report number 153. A detailed discussion of all the points thus raised is impracticable within the limits of a judicial opinion nor is it necessary. The various contentions of the parties may be grouped and formulated in a few general questions.

The complaint and defense of the United States may be voiced in the statement that the contract in question called for the construction of 66 ships constructed at a total cost price of about $122,000,000.00 from which the contractor has received a profit of nearly $20,000,000.00 and is claiming the legal right to over $5,000,000.00 more, in addition to whatever

profits its subsidiaries may have made on the supply of materials to the contractor. This (without the latter if any) makes up the portentous total of about $25,000,000.00. Even the part of it which the contractor has received is characterized by the United States as exorbitant, unconscionable and as the fruit of fraud, because of which the United States, as a defrauded party, is seeking to have restored to it the unjust sums exacted.

The answer and demand of the contractor is that it has asked and is asking for no more than the moneys due it under the contract entered into by the parties and that so far from what it has received being excessive that there is still an unpaid balance due it for the payment of which the action in assumpsit has been instituted. This brings the question before the Master and this Court to that of to how much has the contractor a right under the dealings and contract between the parties? It must be borne in mind that we are concerned with the legal justice of the cause and cannot, except so far as the law directs, give weight to other considerations.

Among the horrors of war a not inconsiderable one is the way and extent to which Army contractors profit by the needs of government. It may be that this in case of most contracts is necessarily true. Prices at such times are upset. Someone must take a real and great risk and a contractor cannot be expected to take it. It is proverbial that war profits from Government contracts are far beyond what in peace time would be deemed fair and reasonable.

It is pointed out by the United States that, in the instant case, the contractor had no reason to bar-

gain for large profits to off-set a risk of loss because this contractor under this contract took no risk whatever. The exaction of inordinate profits is thus viewed by the United States as an advantage taken of the pressing needs of the Government. As war time is to other citizens a time of sacrifice, it seems unholy and sinful to make of the calamity of the people a source of inordinate gain. As before stated, however, we are dealing with a matter of contract and not sentiment, patriotic or otherwise.

There have come into use three types of Government war time contracts, each designed for the protection of the Government, but each proving to be to the advantage of the contractor. Perhaps the only remedy—aside from refraining from war—is to bear with the evil as uncontrollable. One is the flat sum price of peace time contracts. The risk of higher prices is always assumed by the Government, and if the higher prices are not paid by the contractor, they go into his profits. Another is the cost plus price. Theoretically this is just to both contractor and Government. In practice it however very much inflames the cost of performance of the contract and the general judgment pronounces it to fail of its purposes. A third is that made here, which is a cost plus contract with the added feature of giving to the contractor an inducement to hold down the cost to the lowest figure by giving him a percentage of any saving effected. The success of this type of contract in benefiting the Government depends upon the estimate of what the cost of construction should be. The United States avers that the contractor here fraudulently made this estimate so high as to make this part of the profit to the contractor, inordinate.

The United States stands upon three propositions: One turns upon the interpretation given to the contract; the second upon a fact finding, and the third upon a conclusion of law. These three propositions are:

1. The percentage of saving which the contractor is to receive is not based upon the difference between the estimated cost and the actual cost but upon that part of this difference which was due to the services rendered by the contractor.

It is not altogether clear whether the United States is relying upon this as a construction of the contract as made or whether upon the doctrine of unconscionable contracts, invoked in the third position of the Government, later discussed. As a method of treatment we limit it at present to the proper interpretation of the contract. It need only to be said that the Master has not so construed the contract, and we are constrained by its wording to agree with the Master. The contract gives to the contractor, one-half of the difference between the estimated cost and the actual cost of the ships. The Government's criticism of the contract is based upon this interpretation of its meaning.

2. The estimated cost of construction, inserted in the contract as one basis for the determination of the bonus profit to the contractor, was fraudulently overstated by the contractor so as to make this part of the contractor's profits, inordinately large and exorbitant.

This is a charge of actual fraud perpetuated by deception. The Master has found against this charge of actual fraud and under all the evidence he

could not have found otherwise. The managers for the contractor adopted the famous Rob Roy distinction who admitted he was a robber but proudly proclaimed that he was no thief. The contractor boldly and openly fixed the figures in the estimated cost so high as to give them the promise of large bonus profits. The managers for the Fleet Corporation knew that the estimate was high and why it was made high and so protested it. The reply of the contractor's managers was "we will take the contract with this promise of bonus profits incorporated in it but not otherwise. You take it or leave it". Whatever wrong there was in this, may have been the wrong in a daylight robbery but there was no element of deception in it.

3. The contract, although without any element of fraudulent deception in its making, in its performance results in profits to the contractor, so inordinately large as to be extortionate and to render the contract unconscionable and thus unenforceable in Equity or at Law.

This is the real cause of action set up in the Bill and the real defense interposed to the action at law. As viewed by the Government these profits are so large "that no one short of lunacy would agree to pay them and no honest man would accept them". The analogue is the enforcement of the contract of a drowning man to give an inordinately large reward to one who can without risk and with little trouble rescue him.

This presents the subject of the obligation of contracts and enforcement. This obligation has always been regarded as the very corner stone of the fabric of civilization. The whole business commercial

structure is built upon it. It may well be thought that of late years we have gone quite far enough toward abolishing the obligation of debt. There had always been however a limit to the binding force of a contract or at least the extent to which the law will go in enforcing it and this is the limitation which the United States invokes. When the results and consequences of the enforcement of a contract are such as to stagger our sense of what is just and fair, this alone may be deemed evidence of hidden fraud. Resort is had to various expedients to in effect avoid the contract. One is to a strict interpretation of the contract. The obligee may have his pound of flesh but not a little more or less and not a drop of blood. Sometimes a quantum meruit is substituted for that for which the contract calls. Sometimes a limit imposed by the arbitrary power of the law is placed upon what the obligee may exact, as in the case of our usury laws. Sometimes what is called a "policy of the law" is interposed to the enforcement of a particular contract. The law is powerless, in every case of contract, to prevent the unscrupulous from taking advantage of the unwary. All it can do is to weigh the need to observe and enforce the obligation of debt against the injustice and unfairness resulting from a particular contract. It cannot rewrite the contract between the parties. What really happens is this. The claimant has his contract but cannot enforce it without the aid of the Law. The Law simply refuses its aid to an unconscionable contract.

Applying these generalities to the case before us there is presented the thought that the Government views this question as one affecting sovereignty. The sovereign needs no help from the Courts. It

cannot be sued nor can a judgment against it be enforced without its consent. There would be nothing staggering in the proposition that the sovereign might interpose a quantum meruit limitation to any demand made upon him. This contract however was not made with the United States but with the Fleet Corporation. This Court ruled (per Thompson, J.) that the Fleet Corporation was a corporation, and that the legal consequences of this fact were not affected by the circumstance that the United States was an owner of its stock or indeed its sole owner. The United States Supreme Court has since so ruled.

> United States vs. McCarl, 275 U. S., 1,
> Fleet Corporation vs. Harwood, 281 U. S., 519.

We are in consequence dealing with a contract made between private parties. In viewing the "unconscionable profits" phase of it, there is this to be said. The motive for the insertion of the bonus feature is obvious. Unless the promise was of substantial profits, the incentive to keep down the cost would be lacking. Consequently it was made one-half of the total savings. It is doubtless true that there is no way of curbing "army contract" profits in time of war. What the Government is to be protected from is the higher war time cost. The direct way of measuring this is by the contrast of the actual war time cost with an estimate of what the peace-time cost would have been. There would be many ways of checking up on this but such a contract would be difficult to frame. The bonus in this contract was measured by the contract of an estimated war time cost with the actual cost. There is no way

of checking up on such an estimate. It is almost altogether a guess. The only check would be to limit the maximum savings profit payable. The contractor here bluntly refused to enter into a contract with such a limitation. The strongest position for the Government to take is that an agreement to pay a savings bonus is an agreement to pay something for nothing.

The cost plus agreement here made was really a hiring of the contractor's equipment and organization on a ten per cent. commission basis. The contractor was really an employee of the Fleet Corporation. As such employee it was bound to render due service in keeping down the cost of construction to its employer. The exaction of a bonus for doing what it was the contractual duty of the employee to do and what it was otherwise paid for doing, partakes of the nature of a racket. We are here applying the test of what is unconscionable. There is a recognized margin however between the service which an employee is in duty bound to render and that which he is capable of rendering. It is common practice to call forth this reserve energy of employees by offering the inducement of extra pay or a bonus for increased service by which the employer benefits. It is likewise common to measure the value of this extra service by results. A bonus given for time construction is an illustration. Such agreements may be based upon a wrong principle but in view of a general and common practice they could not be condemned as unconscionable. For one party to a contract to take advantage of the ignorance or necessities of another may well be condemned as ethically wrong. Taking candy from a child is the acme of meanness. When a party should be relieved

of the obligation of a contract because the other party to it has reaped an unexpected or undue profit, is to be determined by the circumstances of each individual case.

The Master has given to the consideration of this case painstaking care. He has supported his conclusions by reasons set forth in a Report of gratifying clarity and bearing every evidence of considerate judgment. We accept his conclusions as sound and adopt them.

This disposes of all the questions raised by the exceptions to this voluminous Report except those which relate to the question of the allowance of interest. The United States excepts to the allowance of any interest and the Steel Company to the allowance made as inadequate. We have been unable to find these specific exceptions other than 3 and 4 of the Steel Company. The Question was however argued before us and we will assume that it is raised by appropriate exceptions. The question of interest allowance is commonly treated in the reported cases in a more or less perfunctory way. There seems to be a disposition to treat it as a matter of course by allowing interest. Controversy is commonly over the rate of allowance. Interest is however a matter of contract, express or implied, or is an element in the assessment of damages. Here the contract was to pay a sum of money based upon a percentage of savings in the cost of the construction of these ships. There was no agreement to pay interest. The interest doctrine of the law of Pennsylvania in damage cases has been well stated by the Master. In tort cases it is not allowed qua interest but is allowable as an element in the assessment of the damages

suffered by the plaintiff. The rate of allowance is not controlled by the usury Statutes except that what is commonly called the lawful rate cannot be exceeded. The reason for this limitation is obvious. In breach of contract cases what is really the like rule applies. Damages for the breach must be assessed. Deferred payment is an element.

We have in mind numerous cases, many of which have been cited to us, which rest upon a fiction. The fiction is that the damages became payable on the breach and there was then an implied promise to pay at once or to pay interest on deferred payments. Here there is no room for an implied promise. The promise was express to pay this bonus based upon a percentage of savings. Payment was not due until the saving was determined. This means here that the sum due does not bear interest until ascertained and hence not until judgment recovered. This in theory is no hardship to the contractor. He may press his claim promptly to judgment. He cannot turn it into an investment bearing, as is claimed here, six per cent. interest, thereby doubling the final payment to be made.

The Master was fully justified in assessing the damages, in considering the interest item at a two per cent. rate. By the same token he might have excluded it altogether, which we think he should have done. There is in the allowance of interest something in the nature of a penalty for delayed payment. We do not think any such penalty was incurred here.

It has been urged upon us that no interest should be allowed because interest is not recoverable against the United States. We refuse to so hold but are in accord with the finding of the Master that the

judgment to be entered is one against the Fleet Corporation.

To give definiteness of date to the decree and judgment to be entered none is now entered but leave is granted to enter a formal decree and judgment in accordance with this opinion and the conclusions stated below.

1. The Bill in Equity should be dismissed for want of Equity and the Cross-Bill for the additional reason of want of jurisdiction.

2. Judgment should be entered in the action at Law of the Bethlehem Shipbuilding Corporation, Ltd. for the sum found by the Master without interest.

3. The other actions at law should be disposed of in accordance with the stipulations of the parties.

4. The Exceptions filed to the Report of the Master should be dismissed except the exception, if any, to the interest allowance which should be sustained.

5. As thus modified, if there is such exception, the Report of the Master should be approved and confirmed.

OPINION SUR RULE TO AMEND CAPTION OF CASE.

(Filed June 27, 1938)
Argued June 27th, 1938.

Dickinson, *J.* June 27th, 1938.

After the above action was brought Congress changed the name of the defendant from "United Shipping Board Emergency Fleet Corporation" to "United States Shipping Board Merchant Fleet Corporation". The plaintiff has accordingly entered the pending rule to change the name of the defendant from the old name to the new. We see in this nothing more than a formality to have the name of the defendant of record conform to its name in fact. The very competent counsel for the United States opposes the motion because the effect of it will be something more than a mere change in name. We are getting somewhat outside of the record in stating that we do not see that this change of name will in any way affect the merits of the cause. The plain truth is that the defendant is nothing more than a name. It has no assets and a judgment against it would be in practical effect a nullity. The only value a judgment has is that it may be an inducement to or reason for Congress appropriating the money to pay the judgment. It has, so far as we have been able to discover, no other value. It further seems that the corporation defendant whether by one name or the other has in fact been dissolved. This means that the action is against a ghost but even a ghost may have a name.

A formal order is submitted herewith.

ORDER

(Filed June 27, 1938)

And now, this 27th day of June, 1938, upon argument and due consideration of the plaintiff's motion and rule upon defendant to show cause why title to the above action should not be amended, entered June 20, 1938, it is ordered that the title to this action be so amended as to name the defendant by the name to which its former name as shown above was changed by Act of Congress approved February 11, 1927, Ch. 104, Sec. 1, 44 Stat. 1083, to-wit, United States Shipping Board Merchant Fleet Corporation, so that the title to this action as so amended shall be

Bethlehem Shipbuilding Corporation, Ltd.,
Plaintiff

against

United States Shipping Board Merchant Fleet Corporation
Defendant.

By the Court:

(signed) DICKINSON
J.

APPEARANCE OF ATTORNEYS FOR PLAINTIFF

(Filed June 28, 1938)

Enter our appearance for Bethlehem Shipbuilding Corporation, Ltd., plaintiff in the above case.

EVANS, BAYARD & FRICK

by RICHARDSON DILWORTH
Attorney for said plaintiff

June 28, 1938

To Clerk U. S. District Court

APPEARANCE OF ATTORNEY FOR PLAINTIFF

(Filed Aug. 22, 1938)

To the Clerk of the Court:

Enter my appearance for the plaintiff in the above entitled matter.

RICHARDSON DILWORTH
RICHARDSON DILWORTH (sgd.)
Attorney for plaintiff

2635 Fidelity-Phila. Trust Bldg.

OPINION SUR PRAECIPE FOR JUDGMENT

(Filed Sept. 23, 1938)

Argued June 30th, 1938

Dickinson *J.* September 22d, 1938.

Leave was granted the parties to file Briefs, which are now before us.

The question raised is a very narrow one. The action was referred under the provisions of the Pennsylvania Referees Act of 1874. The Referee found a sum to be due the plaintiff to which he added interest at the rate of two per cent per annum. The Court, on exceptions to the Report of the Referee, approved the finding of the principal sum but was of the opinion that no interest should be included in the judgment to be entered. There were in all some 200 exceptions. The plaintiff has excepted to the refusal of the Referee to allow interest at the rate of six per cent, but we found no formal exception otherwise to the allowance of two per cent. The question of the propriety of the allowance of interest was however pressed and fully argued. The Court, being uncertain in the multitude of exceptions what was included, sustained the exception to the allowance of interest "if any" and authorized judgment to be entered for the principal sum without interest. As the question now raised had not been discussed, no judgment was entered but leave was given to move for judgment. Plaintiff now moves for judgment for the principal sum, with two per cent, interest, on the ground that no exception having been

taken to the allowance of interest by the Referee, the judgment entered must follow his findings.

DISCUSSION

The question as thus presented is what we have called the very narrow one of the existence of such an exception, but underlying it are several broader questions.

1. There is included in it the question of whether the cause is to be determined in accordance with the law of Pennsylvania or what have been called "principles of general law". The Constitution confers upon the Courts of the United States the judicial power to determine causes in a limited field. It restricts itself to the mere grant of power and is silent on the subject of the conduct of the trial of cases. It may determine controversies to which the United States is a party and those between citizens of different States. In the latter case it has been finally determined in the recent case of Erie Railroad vs. Tompkins, 58 Dup. Ct. Rep., 817, that the cause is to be tried as to substantive law as it would be tried in the State Court, and the Conformity Statute provides the procedural features shall conform to the State Practice as nearly as may be. This means that the law of the case is to be determined in accordance with the law of Pennsylvania.

2. The question thus becomes what is the law of Pennsylvania on the subject? There is on the part of the legal profession a looseness of discussion of the question of the control which an Appellate Court has of the findings of a subordinate tribunal. Rulings are cited indifferent to whether made in the case of

the Report of a Special Master in Equity; the verdict of a jury; the rulings of a fact finding Commission, or, as here, that of a special tribunal upon which the power to determine a cause has been conferred. The confusion is due to the circumstance that they all have in common the rule that the reviewing Court is predisposed to accept the findings of the lower Court. There are however fundamental differences. A Master in Equity, for illustration, is but an aid to the Court of his appointment and his Report one of recommendation. A jury, on the other hand, is the tribunal to which the determination of a cause is submitted. Its findings are placed beyond the control of the Courts except as such control is regulated by law. The findings of a Referee under the Pennsylvania practice are very much akin to the verdict of a jury. Judgment follows his Report unless exception is taken thereto. The Court otherwise has no control over his findings. This strong vantage ground must be conceded the plaintiff in the instant case.

3. The question before us is thus reduced to the narrow one of whether the allowance of interest was made the subject of an exception. There is no specific exception to the allowance of interest. There is however an exception to the award of judgment, including interest. We could not dismiss this exception without allowing the interest to which we have found the plaintiff has no right. We are in consequence justified in sustaining this exception in part by disallowing interest.

The conclusion reached is that the motion for judgment, including interest, should be denied, but judgment may be entered for the principal sum found by the Referee, with costs.

MEMORANDUM OPINION SUR MOTION FOR DECREE

(Filed Dec. 23, 1938)

Dickinson, J.

The years which have elapsed since this proceeding was instituted and the greater number of years since its subject matter has been in controversy loudly proclaim it is high time the litigation should be brought to an end.

There are two cases growing out of the same transaction, which were tried together. One is the above entitled case in Equity; the other an action at Law. For the convenience of the parties the Equity proceeding was referred to a Special Master and the action at law tried by a Referee under the Pennsylvania Statute of 1874 and its amendment of 1889. Wm. Clarke Mason, Esq. acted as Special Master and also as Referee.

We will discuss the questions raised as if there were but one case and this opinion may be marked as filed in each. The Master and Referee made the required Findings of Fact and formulated his Conclusions of Law thereon. Exceptions were filed to the Report of the Master and of the Referee. These exceptions were all dismissed except one. The learned Referee gave judgment against the defendant in the action at law for the sum he found to be due, with interest at two per cent. The Court sustained the exception to the allowance of interest.

The conclusions reached by the Court were that the Bill in Equity should be dismissed and judgment should be entered against the defendant in the action at law for the sum found by the Master without the inclusion of any interest but with costs. Nothing remained to be done but to enter a formal decree in the Equity proceeding and a formal judgment in the action at law. Moving for these was not the allowance of a re-argument. Counsel for the United States has, however, submitted a full and considered Brief on the question of what the decree and judgment should be. This we have been earnestly urged to consider and out of deference to this request have done so. The form in the decree in the Equity suit follows of course the established practice in Equity but as modified, we suppose, by the New Procedure Rules. The action at law having been submitted to a Referee under the State Act, the procedure there should be in accord with the State practice, as also so modified.

The intended results could be reached by a simple decree dismissing the Bill and the entry of a judgment in the action at law for the found sum, with costs, the judgment to carry interest from the date of its entry. The only question, so far as we can discover, is whether the decree in the Equity case should include Findings of Fact and Conclusions of Law and the judgment in the law case do the same, in accordance with the New Procedure Rule No. 52. That Rule is almost a copy of Equity Rule 70-½. The latter Rule has never been held, and for obvious reasons, to apply to exceptions to a Master's Report nor to the formal decree entered. Indeed the practice in the latter case would conflict with Equity Rule 71. If, however, the Rule is held to apply the

very Rule provides that "the findings of a Master, to the extent that the Court adopts them, shall be considered as the findings of the Court." There is no need to apply Rule 52 to a review of the findings of a Referee when he has complied with the Rule. The State practice has not been uniform on the subject of incorporating Findings in the disposition made of the report of the Referee. They may in consequence be incorporated. If Rule 52 is held to apply to Referee cases then the findings of the Referee by the express terms of the Rule are incorporated.

With many of the propositions of the Brief submitted, we are in accord. The United States without its consent cannot be subjected to the payment of costs. Undoubtedly a Court of Equity may determine the payment of costs. Ordinarily they follow the decree entered but may not. We refuse, however, to impose them, or any part of them, upon the Bethlehem Company. Asking us to do so is to ask for a re-hearing. The Master's and Referee's fees are undoubtedly costs. With us costs are taxed by the Clerk. Fees, however, are fixed by the Court, not by the Clerk. It is accordingly the practice for the Court to fix them and the Clerk taxes them at the sum fixed. The Court in actions at law has no control over the costs. They follow the judgment which carries costs. The Pennsylvania Act fixes the fees of Referees on a per diem basis. The parties however, with the consent of the Referee, have agreed that on the per diem basis the compensation of the Referee is the sum of $15,540.00, and it is so fixed. The Referee ruled that the action at law was not against the United States but a corporation. The Court agreed. To now contend

otherwise is to turn the motion for judgment into a re-argument. The contract between the corporations plaintiff and defendant is governed by the law of contracts of the State. The liability to costs is determined by the law of the State. This Court has no lawful power to substitute its judgment of what the law should be for what the State law is. We cannot in our discretion change that law.

The conclusions are:

1. The decree in the Equity case should be one of a simple dismissal of the Bill.

2. The judgment in the action at law may be a judgment in favor of the plaintiff for $5,272,075.10, with costs of suit and fixing the compensation of the Referee at $15,540.00 as agreed to by the parties.

3. A form of judgment in the action at law is submitted herewith as the final judgment entered.

EXCEPTIONS OF THE PLAINTIFF BETHLEHEM SHIPBUILDING CORPORATION, LTD. TO THE RULINGS AND DECISION OF THE COURT.

(Filed Dec. 27, 1938)

The above-named plaintiff, Bethlehem Shipbuilding Corporation, Ltd., excepts to the rulings of the Court on exceptions of the plaintiff to the rulings, findings and conclusions of the Referee appointed to hear and determine the issues in the above-entitled action and report his findings of fact and conclusions of law to the Court, and to the confirmation and adoption by the Court of rulings, findings and conclusions of said Referee, as follows:

1. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the finding of the Referee that the order of December 8, 1917, referred to in the report of the Referee under the heading "As to the West Coast Contracts" was an order of the Wage Adjustment Board, on the ground that such finding is contrary to the admissions of the parties to this action contained in the stipulation introduced before said Referee and known as Exhibit A, and that there is no evidence to sustain such finding.

2. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the finding, opinion or conclusion of the Referee in that part of said report under said heading "as to the West Coast

Contracts" that "The wage schedule applicable to the West Coast Contracts, as the schedule in effect on January 3, 1918, included the ten per cent war service bonus theretofore made effective in the West Coast yards."

3. To the overruling and dismissal by the court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the conclusion stated in said report that an allowance of interest on the amount found due to the plaintiff to be computed at six per cent per annum would not be justified.

4. To the overruling and dismissal by the Court of the plaintiff's exception to the recommendation contained in said report that interest be allowed upon the several items found due to the plaintiff from the due date for the payment thereof as set forth in said report at a rate per annum less than the legal rate of six per cent.

5. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the denial by the Referee of the conclusion of law No. 2 requested by the plaintiff, that the wage schedule referred to in the West coast contracts is the schedule promulgated by the Shipbuilding Labor Adjustment Board on November 4, 1917, exclusive of the War Service payment of ten per cent authorized by the Fleet Corporation on December 10, 1917.

6. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the failure and refusal of the Referee to find or affirm so much of the conclusion of law No. 4 requested by the plain-

tiff as is to the effect that judgment should be entered herein against the defendant for the amount found to be owing, together with interest.

The plaintiff further excepts to rulings and decisions of the Court as follows:

7. To the failure and refusal of the Court to hold and decide that the amount due to the plaintiff from the defendant on account of vessels completed under direct contracts is the sum of $5,286,583.25, which is shown in Exhibit A attached to the report of the Referee as the amount stipulated by the parties to be due on the basis of the plaintiff's contentions concerning the Wage Schedules referred to, respectively, in Article XIX of each of the West Coast contracts (denominated "Bethlehem's contention (a)") and in Article XIX of each of the East Coast contracts (denominated "Bethlehem's contention (d)"), instead of the sum of $4,871,375.21 on account of such completed vessels found due by the Referee, the difference between said sums, to wit $415,208.04, being the amount on account of savings in the cost of vessels completed under said West Coast contracts which the Referee failed to find due to the plaintiff in consequence of the Referee's erroneous construction of said Article XIX of each of said West Coast contracts.

8. To the finding of the Court that the exception of the defendant to the award of judgment, constituted, and had the force and effect of an exception to the Referee's allowance of interest upon the award.

9. To the ruling and decision of the Court that the plaintiff is not entitled to interest on the sev-

eral items found due from the defendant to the plaintiff from the due date for the payment thereof as set forth in the report of the Referee.

10. To the failure and refusal of the Court to direct that the amount for which judgment shall be entered herein shall include interest at the rate of six per cent per annum on the several items found due from the defendant to the plaintiff from the due date for the payment thereof as set forth in the report of the Referee.

Dated, December , 1938

EVANS, BAYARD & FRICK,

RICHARDSON DILWORTH,
Attorneys for Bethlehem Shipbuilding Corporation, Ltd.

ORDER ALLOWING EXCEPTIONS

And now, December 22nd, 1938, the above exceptions are allowed.

(s) O. B. DICKINSON,
J.

JUDGMENT

(Filed December 23, 1938)

And now, December 16th, 1938, a jury trial having been waived and this case referred to a Referee under the provisions of the Pennsylvania Act of May 14th, 1874 as amended, the Referee having filed his Report, and argument having been heard on exceptions to said Report:

It is ordered and determined that the several exceptions taken and filed by the respective parties to the report of the Referee and to his rulings on requests for findings and conclusions be and they hereby are overruled, and the several rulings, decisions, findings and conclusions of law of the Referee as stated and contained in said report and in the appendix thereto containing the rulings of the Referee on requests for findings and conclusions be and they hereby are confirmed and adopted by the Court and made respectively, the rulings, decisions, findings of fact and conclusions of the Court in this action; except that the Court having ruled that the exception filed by the defendant to the Referee's allowance of interest on the amount found due to the plaintiff should be sustained and no interest be included in the judgment.

It is further ordered that judgment be and hereby is entered in favor of the plaintiff and against the defendant for the sum of $5,272,075.10, and for the costs of this action, including the compensation of

the Referee herein, William Clarke Mason, Esquire, which compensation is hereby fixed and allowed at the sum of $15,540.00.

By the Court,

(s) DICKINSON, *J.*

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 11970 December Term, 1925

Bethlehem Shipbuilding Corporation, Ltd.

vs.

United States Shipping Board Merchant Fleet Corporation

DOCKET ENTRIES

1938

Dec. 23, Judgment in favor of plaintiff in $5,272,075.10 together with costs including Master's fee, filed. 12/27/38 Noted and notice mailed.

Dec. 27, Exceptions by plaintiff to rulings of the Court and Order of Court allowing exceptions filed. 12/28/38 noted and notice mailed.

1939

Feb. 3, Plaintiff's bill of costs filed.

Feb. 14, Affidavit of service of notice of taxation of costs filed.

Feb. 14, Clerk's taxation of costs in $25.00 filed.

Mar. 10, Defendant's Notice of Appeal filed. 3-11-39 Copy to Richardson Dilworth Esq.

Mar. 10, Copy of Clerk's Notice of Appeal to U. S. Circuit Court of Appeals filed.

Mar. 20, Plaintiff's Notice of Appeal filed. 3-22-39 Copy to J. C. Ganey and copy to Bon Geaslin.

Mar. 20, Copy of Clerk's Notice of Appeal to U. S. Circuit Court of Appeals filed.

Mar. 20, Plaintiff's bond on Appeal in $250. with United States Guarantee Co., Surety, filed.

April 14, Order of Court extending time to file record on appeal to May 4, 1939 filed.

April 15, Plaintiff's statement for abridgement of exhibits filed.

April 15, Statement of Plaintiff-Appellant of points on which it intends to rely on its appeal filed.

April 15, Plaintiff's designation on appeal filed.

April 17, Affidavit of Service of Plaintiff's designation of record etc. filed.

April 24, Statement of Plaintiff-Appellant of Statement of points on which it intends to rely on its Appeal filed.

April 24, Order of Court directing transmittal of original papers and Exhibits to Court of Appeals filed. 4-25-39 noted, notice waived.

April 24, Stipulation of Counsel as to contents of record on appeal in lieu of cross designation by defendant-appellant filed.

DEFENDANT'S NOTICE OF APPEAL

(Filed March 10, 1939)

Notice is hereby given that United States Shipping Board Merchant Fleet Corporation, defendant in the above action, hereby appeals to the Circuit Court of Appeals for the Third Circuit from each and every part of the judgment filed in this action on December 23, 1938, except that no appeal is taken from that part of the judgment

(1) over-ruling the exceptions filed by Bethlehem Shipbuilding Corporation, Ltd., to the report of the Referee and to his rulings on requests for findings of fact and conclusions of law

(2) affirming without qualification the requests for findings of fact and conclusions of law submitted by The United States of America and the United States Shipping Board Emergency Fleet Corporation and contained in the appendix to the report of the Referee, and

(3) sustaining defendant's exception to the Referee's allowance of interest on the amount found due to the plaintiff and ruling that no interest be included in the judgment.

March , 1939

J. CULLEN GANEY,
United States Attorney for the Eastern District of Pennsylvania
Attorney for United States Shipping Board

Merchant Fleet Corporation.

Office and Post Office Address:

Second and Chestnut Streets,
Philadelphia, Pennsylvania.

BON GEASLIN,
General Counsel, United States Maritime Commission.
Attorney for United States Shipping Board Merchant Fleet Corporation.

Office and Post Office Address: Commerce Building, Washington, D. C.

PLAINTIFF'S NOTICE OF APPEAL

(Filed March 22, 1939)

Notice is hereby given that the plaintiff in the above-entitled action, Bethlehem Shipbuilding Corporation, Ltd., hereby appeals to the United States Circuit Court of Appeals for the Third Circuit from the final judgment in this action filed on December 23, 1938, and entered and noted in the Civil Docket on December 28, 1938, in so far as said judgment fails to include and award to the plaintiff, and in so far as the District Court has failed and refused to award to the plaintiff in said judgment, interest on the amount adjudged to be recovered by the plaintiff from the respective dates on which the various parts of said amount became due to the plaintiff.

Dated March , 1939.

RICHARDSON DILWORTH,
EVANS, BAYARD & FRICK,
By B. O. FRICK,
Attorney for Plaintiff.
123 South Broad Street,
Philadelphia, Pennsylvania.

To: Clerk of the United States District Court for the Eastern District of Pennsylvania.
J. CULLEN GANEY, ESQ.,
United States Attorney for the Eastern District of Pennsylvania,

Attorney for United States Shipping Board Merchant Fleet Corporation.
Second and Chestnut Streets,
Philadelphia, Pennsylvania.

Bon Geaslin, Esq.,
General Counsel, United States Maritime Commission,
Attorney for United States Shipping Board Merchant Fleet Corporation,
Commerce Building,
Washington, D. C.

STATEMENT OF PLAINTIFF - APPELLANT BETHLEHEM SHIPBUILDING CORPORATION, LTD., OF THE POINTS ON WHICH IT INTENDS TO RELY ON ITS APPEAL FROM THE JUDGMENT IN THE ABOVE-ENTITLED CAUSE

(Filed April 15, 1939)

Pursuant to Rule 75 (d) of the Federal Rules of Civil Procedure, the statement of the Plaintiff-Appellant Bethlehem Shipbuilding Corporation, Ltd., of the points on which it intends to rely on its appeal from the judgment in the above-entitled cause is as follows:

(1) The District Court erred in failing and refusing to include in the amount of the judgment awarded to the plaintiff against the defendant herein interest at the legal rate of interest on the amount adjudged to be recovered by the plaintiff from the respective dates on which the various parts of said amount became due to the plaintiff.

(2) The District Court erred in failing and refusing to include in the amount of the judgment awarded to the plaintiff against the defendant herein, interest at the rate of not less than two per cent. per annum on the amount adjudged to be recovered by the plaintiff from the respective dates on which the various parts of said amount became due to the plaintiff, the Special Master and Referee in his Report filed herein having found and recommended that the judgment in favor of the plaintiff herein

should include an allowance of interest at the rate of two per cent. per annum upon the amounts found in said Report to be due to the plaintiff and for the periods set forth in said Report and no exception to such finding and recommendation of the Referee having been taken or filed by the defendant or having been brought before the District Court for hearing or review.

Dated April 15, 1939.

RICHARDSON DILWORTH,
Attorney for Plaintiff-Appellant, Bethlehem Shipbuilding Corporation, Ltd.

STATEMENT OF PLAINTIFF - APPELLANT UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION OF THE POINTS ON WHICH IT INTENDS TO RELY ON ITS APPEAL FROM THE JUDGMENT IN THE ABOVE-ENTITLED CAUSE

(Filed April 24, 1939)

Pursuant to Rule 75(g) of the Federal Rules of Civil Procedure, the statement of the Plaintiff-Appellant, United States Shipping Board Merchant Fleet Corporation, of the points on which it intends to rely, on its appeal from the judgment filed December 23, 1938, in the above-entitled cause is as follows:

(1) The District Court erred in entering judgment in favor of the Plaintiff herein and against the Defendant herein in the sum of $5,272,075.10 and no judgment for any sum whatsoever should have been entered against Defendant.

(2) The District Court erred in entering judgment against the Defendant herein for the costs in the above-entitled Cause No. 11970 and judgment for no part of such costs should have been entered against Defendant herein.

(3) The District Court erred in entering judgment against the Defendant herein for the compensation of the Referee in the above-entitled cause, William Clarke Mason, Esq., in the sum of $15,540 and judgment for no part of said Referee's al-

lowance should have been entered against the Defendant herein.

(4) The District Court erred in not entering judgment for the full amount of costs and compensation of the Referee, William Clarke Mason, Esq., against the Plaintiff herein.

(5) The District Court erred in not entering judgment against the Plaintiff in the above-entitled cause in an amount as stipulated by counsel of $19,654,856.32.

(6) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were entered into as a result of the fraudulent representations and actions of the Plaintiff herein.

(7) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were entered into through constructive fraud on the part of the Plaintiff.

(8) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were unconscionable and unenforceable.

(9) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were entered into on the basis of a mistake of fact.

(10) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the Plain-

tiff herein failed to prove that it saved material, increased efficiency, or did anything extraordinary or unusual resulting in a benefit to the Defendant herein which it was required to do under the contracts in controversy in order to recover profit under the half savings clause of the contracts in controversy.

(11) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, inasmuch as the evidence does not show that Plaintiff did anything under the half savings clause of the contracts in controversy in the above-entitled Cause No. 11970 which it was not required to do independently of that clause and particularly because Plaintiff herein failed to show any benefit accrued to the Defendant herein under the half savings clause, there was a failure of consideration for any payment under the half savings clause of the contracts in controversy.

(12) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 are against public policy and hence void.

(13) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the representatives of Defendant had no power to enter into the contracts in controversy in the above-entitled Cause No. 11970.

(14) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, Defendant had no power to enter into the contracts in controversy in the above-entitled Cause No. 11970.

(15) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, costs in the above-entitled Cause No. 11970 and the fee of Wil-

liam Clarke Mason, Esq., as Referee in the above-entitled Cause No. 11970, constitute costs and/or expenses against the United States and as such are not properly taxed against Defendant.

(16) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the taxing of the total amount of the Referee's fee in the above-entitled Cause No. 11970 was erroneous, and at least one-half of such Referee's fee should have been allotted as costs in the suit in Equity filed in the United States District Court for the Eastern District of Pennsylvania (No. 3315, 1925 term) by the United States of America v. Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company.

J. CULLEN GANEY,
BON GEASLIN,
Attorneys for Plaintiff-Appellant United States Shipping Board Merchant Fleet Corporation.

Dated, April 24, 1939.

STIPULATION OF CONTENTS OF THE RECORD ON APPEAL

(Filed April 24, 1939)

Inasmuch as the questions of law and fact sought to be raised for review by the Circuit Court of Appeals for the Third Circuit on the appeal of the defendant in the above entitled cause No. 11,970 and on the appeal of the complainant in the above entitled cause No. 3315 are substantially the same and the major portion of the papers and documents that will constitute the record on appeal in said respective causes are the same, the respective parties to said causes hereby consent that the record on said appeal of the defendant in said cause No. 11,970 and on the appeal of the complainant in said cause No. 3315 may be a combined record and hereby stipulate and agree pursuant to Rule 75(f) of the Federal Rules of Civil Procedure that such combined record shall, in addition to the exhibits ordered pursuant to Rule 75(i) of the Federal Rules of Civil Procedure to be sent to the Appellate Court in lieu of copies by order of the District Court filed April 24, 1939, consist of:

A. *The following papers and documents with respect to the above entitled cause No. 11970:*

1. The following part of the Statement of Claim in Assumpsit, and exhibits (all of the contracts in controversy except contracts Nos. 184 and 312, copies of which are annexed to the answer in cause No. 3315, the record in which is to be printed with

the record in this cause), attached thereto, filed * January 28, 1926:

(a) The front cover, showing the title of the action and notice to the defendant to file an affidavit of defense (the Index, pages i to iv, inclusive, is to be omitted).

(b) Pages 1 to 88, inclusive, and paragraph One Hundred Ninety-second on page 89, (thus including causes of action First to Sixteenth, inclusive); paragraphs Two Hundred Sixth to Two Hundred Eleventh, inclusive, on pages 94 to 96, (thus including causes of action Nineteenth and Twentieth), together with the heading of each of the last mentioned causes of action; and paragraph Two Hundred and Ninety-seventh, together with the names of the attorney and counsel for the plaintiff and the verification.

(c) Exhibits 1-A, 2-A, 3 to 16, inclusive, and 19 (all other exhibits attached to the Statement of Claim are to be omitted), with the following omissions therefrom:

From Exhibit 1-A omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXIX, inclusive;

From Exhibit 2-A omit Articles III to IX, inclusive, XI, the second paragraph of XIII

* Wherever reference herein is made to the filing of papers or documents, such filing is in the United States District Court for the Eastern District of Pennsylvania.

headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXIX, inclusive;

From Exhibit 3 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 4 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", the first paragraph of XIV headed "Liens and Taxes", and Articles XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 5 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 6 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV, XXIV-A and XXVI to XXVIII, inclusive;

From Exhibit 7 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV, and XXVI to XXVIII, inclusive;

From Exhibit 8 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspector's Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 9 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV, XXIV-A and XXVI to XXVIII, inclusive;

From Exhibit 10 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 11 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII inclusive;

From Exhibit 12 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 13 omit Articles II to XI, inclusive, the second paragraph of XIII, headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 14 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 15 omit Articles III to V, inclusive, VII to XII, inclusive, XIV to XIX, inclusive, XXII, XXIII, XXV to XXXII, inclusive, XXXIV and XXXV;

From Exhibit 16 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspector's Certificate", XIV, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive; together with Exhibit "A" attached to said Exhibit 16;

From Exhibit 19 omit paragraph 3 of Article I, together with the heading "Progress Shipment and Storage", paragraphs 3, 4(a), 4(b), 4(c), 5(a) to 5(f), inclusive, 6(a), 6(b) and 7 of Article II and Articles III to XI, inclusive, together with the letter dated October 17, 1919, and the paragraph marked VII, found on pages 542 to 545, inclusive, of the Statement of Claim.

2. The following parts of the Affidavit of Defense, with set-off and counter-claim, filed January 10, 1927:

(a) Pages 1 to 70, inclusive, and so much of paragraph One Hundred and Ninety-second as appears on page 71 (thus including paragraphs First to One Hundred and Ninety-second, inclusive, containing the defenses to causes of action First to Sixteenth, inclusive);

(b) Paragraphs Two Hundred and Sixth to Two Hundred and Eleventh, inclusive, from pages 75 to 77 (thus including the defenses to causes of action Nineteenth and Twentieth);

(c) Paragraphs First on page 86 to and including paragraph Sixtieth on page 138, constituting defendants Set-off and Counterclaim.

(d) Exhibits A, C and D.

3. Plaintiff's reply to the defendants' set-off and counterclaim, filed April 4, 1927.

4. Appearance of Charles Sinkler and Ralph B. Evans as attorneys for Plaintiff, filed February 18, 1926.

5. Agreement and order of reference, appointing Owen J. Roberts, Esq., Referee, filed May 1, 1928.

6. Report of Owen J. Roberts, Esq., disqualifying himself from acting as Referee, filed July 24, 1930.

7. Agreement appointing William Clarke Mason, Esq., Referee, filed March 23, 1931.

8. Acceptance and oath of William Clarke Mason, as Referee, filed March 28, 1931.

9. Report of the Special Master and Referee, dated and filed February 7, 1936, including Exhibits A and B thereto and the Appendix thereto containing requests of the parties for findings and rulings thereon and exceptions of the parties filed with the Special Master and Referee.

10. Exceptions of the United States of America and United States Shipping Board Emergency Fleet Corporation to the report of the Special Master and Referee, filed February 25, 1936.

11. Opinion of Oliver B. Dickinson, Judge of the United States District Court for the Eastern District of Pennsylvania, upon exceptions filed by plaintiff and defendant to the report of the Special Master and Referee, filed June 3, 1938.

12. Opinion of Judge Dickinson upon ruling to amend caption of the case, filed June 27, 1938.

13. Order changing caption of the case, filed June 27, 1938.

14. Appearance of Evans, Bayard and Frick as attorneys for the Plaintiff, filed June 28, 1938.

15. Appearance of Richardson Dilworth as attorney for the Plaintiff, filed August 22, 1938.

16. Opinion of Judge Dickinson upon Praecipe for judgment, disallowing interest to plaintiff on the judgment, filed September 23, 1938.

17. Opinion of Judge Dickinson upon Motion for Decree, assessing costs and the compensation of the Special Master and Referee against the defendant, filed December 23, 1938.

18. Exceptions of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., to the rulings and decisions of the District Court, filed December 27, 1938.

19. Judgment filed December 23, 1938.

20. Transcript of docket entries under dates of December 23, and December 27, 1938, and February 3 and February 14, 1939, and all subsequent entries.

21. Defendant's Notice of Appeal from the judgment, filed March 10, 1939.

22. Plaintiff's Notice of Appeal from the judgment, filed March 22, 1939.

23. Plaintiff's Statement of the Points on Which It Intends to Rely.

24. Defendant's Statement of the Points on Which It Intends to Rely.

25. Stipulation of the contents of the Record on Appeal.

26. Designation of Plaintiff-Appellant of the por-

tion of the record to be contained in the record on its appeal.

27. Evidence taken before William Clarke Mason, Esq., pages 1 to 1024, filed April 4, 1931 and pages 606 to 610, inclusive, of the evidence before Owen J. Roberts, Esq.

28. Exhibit A, introduced in evidence (p. 6) at the hearing before William Clarke Mason, Esq., (hereinafter called "Second Hearing"), being copy of stipulation of facts with the following omissions and changes:

From the Index omit all following "Contract No. 465 S. C.—(page 65)";

From pages 1 and 2 omit the titles of the actions at law Nos. 11976, 11974 and 11972;

From pages 65 to 72, inclusive, omit paragraphs 119 to 126, inclusive, and insert in lieu thereof following the heading "East Coast Contract No. 465 S. C. (Bethlehem Ship's Sixteenth Cause of Action)" as follows:

> See First Supplemental Stipulation of Facts, Exhibit B;

Beginning on page 72 with the heading "Contract for Plant Facilities at Sparrows Point" omit all to the end of paragraph 315 on page 136;

Omit Exhibits A to D, inclusive, attached to said Exhibit A.

After exhibit heading "Exhibit E" insert:

> Exhibit E is the same as Exhibit G109 shown elsewhere in this transcript.

and omit the entire text of Exhibit E.

After the exhibit heading "Exhibit F" insert:

> Exhibit F is the same as Exhibit B29 shown elsewhere in this transcript.

and omit the entire text of Exhibit F.

After the exhibit heading "Exhibit G" insert:

Exhibit G is the same as Exhibit G107 shown elsewhere in this transcript.

and omit the entire text of Exhibit G.

After the exhibit heading "Exhibit H" insert:

Exhibit H is the same as Exhibit B30 shown elsewhere in this transcript.

and omit the entire text of Exhibit H.

After the exhibit heading "Exhibit I" insert:

Exhibit I is the same as Exhibit G125 shown elsewhere in this transcript.

and omit the entire text of Exhibit I.

After the exhibit heading "Exhibit J" insert:

Exhibit J is the same as Exhibit G127 shown elsewhere in this transcript.

and omit the entire text of Exhibit J.

After the exhibit heading "Exhibit K" insert:

Exhibit K is the same as Exhibit B14 shown elsewhere in this transcript.

and omit the entire text of Exhibit K.

After the exhibit heading "Exhibit L" insert:

Exhibit L is the same as Exhibit G132 shown elsewhere in this transcript.

and omit the entire text of Exhibit L.

After the exhibit heading "Exhibit M" insert:

Exhibit M is the same as Exhibit G134 shown elsewhere in this transcript.

and omit the entire text of Exhibit M.

After the exhibit heading "Exhibit N" insert:

Exhibit N is the same as Exhibit G135 shown elsewhere in this transcript.

and omit the entire text of Exhibit N.

29. Exhibit B, admitted in evidence at the Second Hearing (p. 6), being copy of supplemental stipulation of facts.

30. Exhibit D, admitted in evidence at the Second Hearing (p. 6), being copy of stipulation of counsel.

31. Exhibit G-4, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Ralph B. Evans from Joseph J. Brown, dated May 1, 1928.

32. Exhibit G-5, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from A. G. Smith, dated June 22, 1928.

33. Exhibit G-6, admitted in evidence at the Second Hearing (p. 186), being a statement purporting to show general characteristics, dates of keel laying, etc., with respect to various ships delivered during the calendar year 1917.

34. Exhibit G-7, admitted in evidence at the Second Hearing (p. 903), being copy of a memorandum to W. A. Shick from H. A. Brecht dated May 29, 1928.

35. Exhibit G-8, admitted in evidence at the Second Hearing (p. 903), being copy of a memorandum to H. A. Brecht from H. H. Shulze, dated May 25, 1928.

36. Exhibit G-9, admitted in evidence at the Second Hearing (p. 903), being schedule showing detail of plates and shapes purchased for hulls 251, 253, 254, 255, dated May 26, 1928.

37. Exhibit G-10, admitted in evidence at the Second Hearing (p. 903), being schedule showing average plant labor rates and direct labor charges for hulls 244-5, 251, 253, 254, 255, dated May 28, 1928.

38. Exhibit G-11, admitted in evidence at the Sec-

ond Hearing (p. 903), being copy of a memorandum to F. A. Shick from E. W. Smith, dated June 9, 1926.

39. Exhibit G-12, admitted in evidence at the Second Hearing (p. 903), being copy of a tabulation showing direct labor cost by months for certain hulls.

40. Exhibit G-13, admitted in evidence at the Second Hearing (p. 903), being copy of a memorandum to F. A. Shick from J. Sidney Lewis, dated June 1, 1928.

41. Exhibit G-14, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to H. Speed from Union Iron Works Co., dated November 9, 1916.

42. Exhibit G-15, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to M. P. Geirrine from Richard B. Carr, dated March 23, 1916.

43. Exhibit G-16, admitted in evidence at the Second Hearing (p. 903), being copy of a tabulation showing direct labor cost by months and plant earning rates for each month on certain hulls.

44. Exhibit G-17, admitted in evidence at the Second Hearing (p. 903), being copy of a telegram to E. W. Geiss from J. Sidney Lewis, dated June 6.

45. Exhibit G-18, admitted in evidence at the Second Hearing (p. 903), being copy of tabulation showing comparison of weights of plates and shapes and average price of same.

46. Exhibit G-19, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to

W. W. Robison from H. G. Smith, dated October 25, 1928.

47. Exhibit G-20, admitted in evidence at the Second Hearing (p. 903), being copy of tabulation showing comparative cost of job 12 materials for hulls 244-5 and hulls 253-4 and 268-9.

48. Exhibit G-21, admitted in evidence at the Second Hearing (p. 142), being copy of a letter to Ralph B. Evans from Joseph J. Brown dated July 6, 1928.

49. Exhibit G-22, admitted in evidence at the Second Hearing (p. 143), being copy of a letter to Mr. Frick from W. W. Robison dated August 8, 1928.

50. Exhibit G-23, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from H. G. Smith dated August 8, 1928.

51. Exhibit G-24, admitted in evidence at the Second Hearing (p. 903), being copy of schedule of structural items as charged on hulls 244-45 and 253-54, and merged into job 12, hulls 268-69 and 1376-81.

52. Exhibit G-25, admitted in evidence at the Second Hearing (p. 903), being copy of tabulation showing comparative cost of job 12 materials on hulls 244-5, 253-4, 268-9 and 1376-81, dated August 2, 1928.

53. Exhibit G-26, admitted in evidence at the Second Hearing (p. 186), being copy of a statement relating to costs with respect to hulls 4158 and 4159, dated July 16, 1928.

54. Exhibit G-27, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from plaintiff, dated June 30, 1928.

55. Exhibit G-28, admitted in evidence at the Second Hearing (p. 903), being copy of memorandum to F. A. Shick from G. H. Bankhard, dated June 14, 1928.

56. Exhibit G-29, admitted in evidence at the Second Hearing (p. 903), being copy of a computation showing direct labor and average plant hourly rate at the Harlan plant of plaintiff, dated May 21, 1928.

57. Exhibit G-30, admitted in evidence at the Second Hearing (p. 903), being copy of computation showing total weight and cost per pound on hull steel according to plate and shape schedule at the Harlan plant, dated May 31, 1928.

58. Exhibit G-31, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from E. W. Geiss, dated June 19, 1928.

59. Exhibit G-32, admitted in evidence at the Second Hearing (p. 117), being copy of letter to Henry P. Brown from Chauncey G. Parker, dated January 17, 1927, together with enclosure referred to therein.

60. Exhibit G-33, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Henry P. Brown from Ralph P. Evans, dated March 22, 1927.

61. Exhibit G-34, admitted in evidence at the Second Hearing (p. 903), being copy of chart prepared by Harry Brown.

62. Exhibit G-39, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from H. G. Smith, dated June 22, 1928.

63. Exhibit G-40, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to J. L. Ackerson from plaintiff, dated August 25, 1919.

64. Exhibit G-41, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to A. F. Pillsbury from John A. McGregor, dated September 29, 1917.

65. Exhibit G-42, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Rear Admiral W. L. Capps from J. W. Powell, dated August 30, 1917.

66. Exhibit G-45, admitted in evidence at the Second Hearing (p. 817), being computations prepared by Joseph A. Honsick.

67. Exhibit G-96, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. L. Capps from John A. McGregor, dated October 26, 1917.

68. Exhibit G-97, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Union Iron Works from F. T. Bowles, dated October 30, 1917.

69. Exhibit G-101, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to A. F. Pillsbury from John A. McGregor, dated November 30, 1917.

70. Exhibit G-104, admitted in evidence at the Second Hearing (p. 75), being copy of letter to de-

fendant from J. W. Powell, dated December 13, 1917.

71. Exhibit G-105, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from J. W. Powell, dated December 14, 1917.

72. Exhibit G-107, admitted in evidence at the Second Hearing (p. 198), being copy of a letter to defendant from J. W. Powell, dated December 14, 1917.

73. Exhibit G-109, admitted in evidence at the Second Hearing (p. 85), being copy of a letter to defendant from J. W. Powell, dated December 19, 1917.

74. Exhibit G-110, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from F. T. Bowles, dated December 19, 1917.

75. Exhibit G-112, admitted in evidence at the Second Hearing (p. 206), being copy of a letter to Charles Piez from J. W. Powell, dated December 20, 1917.

76. Exhibit G-116, admitted in evidence at the Second Hearing (p. 755), being copy of a letter to Charles Piez from J. W. Powell, dated January 3, 1918.

77. Exhibit G-122, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from H. Brown, dated January 17, 1918.

78. Exhibit G-124, admitted in evidence at the Second Hearing (p. 903), being copy of letter to

defendant from J. W. Powell, dated February 12, 1918.

79. Exhibit G-125, admi ed in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from J. W. Powell, dated February 25, 1918.

80. Exhibit G-126, admitted in evidence at the Second Hearing (p. 687), being copy of a letter to defendant from J. W. Powell, dated March 7, 1918.

81 Exhibit G-127, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Bethlehem Steel Corporation from Charles Piez, dated March 18, 1918.

82. Exhibit G-128, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from Charles Piez, dated April 8, 1918.

83. Exhibit G-130, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from J. W. Powell, dated April 16, 1918.

84. Exhibit G-131, admitted in evidence at the Second Hearing (p. 903), being copy of a telegram to Charles A. Piez from plaintiff, dated April 18, 1918.

85. Exhibit G-132, admitted in evidence at the Second Hearing (p. 218), being copy of a letter to defendant from H. Brown, dated April 18, 1918.

86. Exhibit G-133, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from Charles Piez, dated April 23, 1918.

87. Exhibit G-134, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from Charles Piez, dated April 30, 1918.

88. Exhibit G-135, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from H. Coonley, dated May 15, 1918.

89. Exhibit G-150, admitted in evidence at the Second Hearing (p. 903), being copy of extract from proceedings of defendant on June 9, 1920.

90. Exhibit G-154, admitted in evidence at the Second Hearing (p. 55), being copy of document described as "Description of Graph".

91. Exhibit G-155, admitted in evidence at the Second Hearing being copy of explanation of chart prepared by Harry Brown.

92. Exhibit G-159, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to W. W. Robison from H. G. Smith, dated October 25, 1928.

93. Exhibit G-160, admitted in evidence at the Second Hearing, being copy of memorandum to Edward N. Hurley from Charles Schwab, dated October 2, 1918.

94. Exhibit G-161, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to the defendant from the Purchasing Agent of Plaintiff, dated February 7, 1918.

95. Exhibit G-163, admitted in evidence at the Second Hearing being statements of administrative and general expenses and property taxes for Union Iron Works Company, December 1, 1915 to December 31, 1917.

96. Exhibit G-170, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to Mr. Brown from Mr. Evans, dated May 22, 1929.

98. Exhibit G-175, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to Ralph B. Evans from Joseph J. Brown, dated September 7, 1928.

99. Exhibit G-176, admitted in evidence at the Second Hearing (p. 137), being copy of a letter to Ralph B. Evans from Ralph H. Hallett, dated September 21, 1928.

100. Exhibit G-177, admitted in evidence at the Second Hearing (p. 137), being copy of a letter to Mr. Evans from W. W. Robison, dated September 25, 1928.

101. Exhibit G-178, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to defendant from plaintiff, dated April 19, 1918.

102. Exhibit G-207, admitted in evidence at the Second Hearing (p. 504), being copy of a letter to Ralph B. Evans from W. W. Robison, dated June 30, 1928.

103. Exhibit G-208, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to plaintiff from Chester W. Cuthell, dated September 25, 1918.

104. Exhibit G-209, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to Chester W. Cuthell from J. W. Powell, dated September 26, 1918.

105. Exhibit B-6, admitted in evidence at the Second Hearing (p. 860), being a memorandum to the Board of Trustees of defendant from Charles Piez, dated October 9, 1918.

106. Exhibit B-7, admitted in evidence at the Second Hearing (p. 868), being copy of extract from the minutes of the Board of Trustees of defendant on April 30, 1918.

107. Exhibit B-10, admitted in evidence at the Second Hearing, being copy of statement showing summary of industrial group statistics for the years 1926 and 1927.

108. Exhibit B-11, admitted in evidence at the Second Hearing (p. 941), being copy of a statement showing manufacturing profit of United States Steel Corporation during the years 1916 to 1918, inclusive.

109. Exhibit B-14, admitted in evidence at the Second Hearing (p. 977), being copy of a telegram to plaintiff from Underwood, dated March 19, 1918.

110. Exhibit B-17, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to plaintiff from Morris Down Farris, dated June 27, 1918.

111. Exhibit B-18, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to Charles Piez from J. W. Powell, dated July 29, 1918.

112. Exhibit B-19, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to J. W. Powell from Charles Piez, dated August 1, 1918.

113. Exhibit B-20, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to defendant from H. Brown, dated August 12, 1918.

114. Exhibit B-23, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to

plaintiff from Chester W. Cuthell, dated December 21, 1918.

115. Exhibit B-24, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to defendant from J. W. Powell, dated December 28, 1918.

116. Exhibit B-25, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to J. W. Powell from Charles Piez, dated February 1, 1919.

117. Exhibit B-28, admitted in evidence at the Second Hearing (p. 705), being copy of a memorandum to the Vice President of defendant from F. T. Bowles and G. S. Radford, dated January 5, 1918.

118. Exhibit B-29, admitted in evidence at the Second Hearing (p. 708), being copy of a letter to plaintiff from Charles Piez, dated January 5, 1918.

119. Exhibit B-30, admitted in evidence at the Second Hearing (p. 708), being copy of a letter to plaintiff from Charles Piez, dated January 5, 1918.

120. Exhibit B-31, admitted in evidence at the Second Hearing (p. 708), being copy of a letter to plaintiff from Charles Piez, dated January 5, 1918.

121. Exhibit B-33, admitted in evidence at the Second Hearing (p. 894), being summary of hours for 9100 ton vessels built at Fore River plant of plaintiff.

122. Order of the District Court filed April 24, 1939, pursuant to Rule 75 (i) of the Federal Rules of Civil Procedure that the papers and exhibits mentioned therein admitted in evidence at the Sec-

ond Hearing be sent to the Appellate Court in lieu of copies.

B. *The following papers and documents with respect to the above entitled cause No. 3315:*

1. Bill of Complaint, filed April 17, 1925.

2. Answer of Bethlehem Steel Corporation, filed July 25, 1925.

3. Answer of Bethlehem Shipbuilding Corporation, Ltd. filed July 24, 1925, and Exhibits 1, 10 and 18 annexed thereto (all other Exhibits to be omitted).

4. Answer of Bethlehem Steel Company, with Exhibit 1 excluded, filed July 25, 1925.

5. Answer of Fore River Shipbuilding Corporation, with Exhibit 1 excluded, filed July 25, 1925.

6. Answer of Union Iron Works Company, with Exhibit 1 excluded, filed July 25, 1925.

7. Plaintiff's reply to answer of Bethlehem Shipbuilding Corporation, Ltd., with Exhibit B excluded, filed April 15, 1929.

8. Plaintiff's reply to answer of Bethlehem Steel Company, with Exhibit A excluded, filed April 15, 1929.

9. Plaintiff's reply to answer of Fore River Shipbuilding Corporation, with Exhibit A excluded, filed April 15, 1929.

10. Plaintiff's reply to answer of Union Iron Works Company, with Exhibit A excluded, filed April 15, 1929.

11. Agreement and Order of Reference, appointing Owen J. Roberts, Esq., Special Master, filed May 1, 1928.

12. Order of the District Court, appointing William Clarke Mason, Esq., Special Master, to succeed Owen J. Roberts, Esq., filed March 23, 1931.

13. Final decree of the court dismissing plaintiff's bill in Equity filed December 12, 1938.

14. Plaintiff's Notice of Appeal, filed March 10, 1939.

15. Plaintiff's statement of the points on which it intends to rely.

16. Transcript of docket entry under date of December 12, 1938, being final decree dismissing Bill of Complaint and Counterclaim and all subsequent entries.

17. The papers and documents indicated above as part of the record in Cause No. 11970, under the items numbered 6, 9, 10, 11, 16, 17, 25, 27, 28 to 122, inclusive, (which are designated as a part of and incorporated by reference in the record in Cause No. 3315,) but which, however, are not to be reprinted in the record in Cause No. 3315.

The plaintiff in the above entitled Cause No. 11970 having taken a cross-appeal from the judgment therein, and having filed its designation of the portions of the record, proceedings and evidence to be contained in the record on its said appeal, it is further stipulated that this stipulation may serve in lieu of any cross-designation by defendant of additional portions of the record, proceedings and evi-

dence to be included in the record on said appeal of the plaintiff in said cause.

Dated April 24, 1939.

J. CULLEN GANEY,
United States Attorney for the Eastern District of Pennsylvania,
Attorney for the United States Shipping Board Merchant Fleet Corporation, defendant in Cause No. 11970, and the United States of America, plaintiff in Cause No. 3315.

Office and Post Office Address: Second and Chestnut Streets,
Philadelphia, Pennsylvania.

BON GEASLIN,
General Counsel, United States Maritime Commission, Attorney for the United States Shipping Board Merchant Fleet Corporation, defendant in Cause No. 11970, and the United States of America, plaintiff in Cause No. 3315.

Office and Post Office Address:
Commerce Building,
Washington, D. C.

RICHARDSON DILWORTH,
EVANS, BAYARD & FRICK,

By RODNEY T. BONSELL,
Attorneys for Bethlehem Shipbuilding Corporation, Ltd., plaintiff in Cause No. 11970, and Bethlehem Steel Corporation, et al., defendants in the Cause No. 3315.

Office and Post Office Address:
15 Broad Street,
New York, New York.

DESIGNATION OF APPELLANT BETHLEHEM SHIPBUILDING CORPORATION, LTD., OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON ITS APPEAL FROM THE JUDGMENT IN THE ABOVE-ENTITLED ACTION

(Filed April 15, 1939)

The appellant Bethlehem Shipbuilding Corporation, Ltd. designates the portions of the record, proceedings and evidence to be contained in the record on its appeal from the judgment in the above-entitled action, as follows:

I. The Summons in Assumpsit dated January 28, 1926.

II. The following parts of the Statement of Claim in Assumpsit, viz.:

1. The front cover, showing the title of the action and notice to the defendant to file an affidavit of defense (the Index, pages i to iv, inclusive, is to be omitted).

2. Pages 1 to 88, inclusive, and paragraph One Hundred Ninety-second on page 89, (thus including causes of action First to Sixteenth, inclusive); paragraphs Two Hundred Sixth to Two Hundred Eleventh, inclusive, on pages 94 to 96, (thus including causes of action Nineteenth and Twentieth), together with the heading of each of the last mentioned causes of action; and paragraph Two Hundred and Ninety-

seventh, together with the names of the attorney and counsel for the plaintiff and the verification.

3. The following exhibits attached to the Statement of Claim, each abridged as shown in Plaintiff's Statement for Abridgement of Exhibits Attached to the Statement of Claim, filed herewith, viz.:

Exhibits 1-A, 2-A, 3 to 16, inclusive, and 19, (all other exhibits attached to the Statement of Claim are to be omitted).

III. The following parts of the Affidavit of Defense with Set-off and Counterclaim, viz.:

(a) Pages 1 to 70, inclusive, and so much of paragraph One Hundred and Ninety-second as appears on page 71 (thus including paragraphs First to One Hundred and Ninety-second, inclusive, containing the defenses to causes of action First to Sixteenth, inclusive); (b) paragraphs Two Hundred and Sixth to Two Hundred and Eleventh, inclusive, from pages 75 to 77 (thus including the defenses to causes of action Nineteenth and Twentieth); (c) paragraphs First to Sixtieth, constituting the allegations of the Set-off and Counterclaim referred to in the foregoing paragraphs of the Affidavit of Defense, omitting, however, paragraphs Forty-second to Forty-ninth, inclusive, thereof and paragraphs Fifty-fifth to Fifty-seventh, inclusive, thereof; and (d) Exhibits A, C and D attached thereto.

IV. Plaintiff's Reply to defendant's Set-off and Counterclaim.

V. Appearance of Charles Sinkler and Ralph B. Evans as attorneys for the plaintiff filed February 18, 1926.

VI. The stipulation and order of reference to Owen J. Roberts filed May 1, 1928.

VII. The stipulation substituting Wm. Clarke Mason as Referee filed March 23, 1931.

VIII. The acceptance and oath of the Referee filed March 28, 1931.

IX. The Report of Special Master and Referee filed on February 7, 1936, including Exhibit A and Exhibit B thereto and the Appendix thereto constituting pages 1a to 134a, inclusive, thereof.

X. The exceptions of the defendant to the Report of the Special Master and Referee filed February 25, 1936.

XI. The opinion of Dickinson, J., dated June 2, 1938, sur Exceptions to Report of Special Master, &c.

XII. The order dated and filed on June 27, 1938, amending the title of this action.

XIII. Appearance of Evans, Bayard & Frick as attorneys for the plaintiff, filed June 28, 1938.

XIV. Appearance of Richardson Dilworth, as attorney for the plaintiff, filed August 22, 1938.

XV. The opinion of Dickinson, J., sur Praecipe for Judgment filed September 23, 1938.

XVI. The exceptions of the plaintiff to the rulings and decision of the Court, filed Dec. 27, 1938, and order allowing such exceptions.

XVII. The judgment filed Dec. 23, 1938.

XVIII. Transcript of Docket entries under date of December 23, December 27 and December 28, 1938, and February 3 and 14, 1939, and all subsequent entries.

XIX. Plaintiff's Notice of Appeal, filed March 22, 1939, with the date of filing.

XX. The designations of the parties as to matters to be included in the record on the plaintiff's appeal.

XXI. The statement of the Plaintiff-Appellant of the points on which it extends to rely on its appeal.

XXII. Excerpts from the transcript of the trial before William Clarke Mason, Esq., as Referee, and exhibits therein referred to, as follows:

(From pages 1 and 2 of the transcript)

No. 11970 December Sessions, 1925

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

v.

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION;

At Law

Hearing before WILLIAM CLARKE MASON, ESQ., Special Master and Referee, held in Room 313, Federal Building, Ninth and Market Streets, Philadelphia, Monday, March 30, 1931, at 10 o'clock A. M.

Present:

William Clarke Mason, Esq., sitting as Special Master in No. 3315, March Sessions, 1925, in Equity; and as Referee, by agreement, in Nos. 11970, 11972, 11974 and 11976, December Sessions, 1925, at Law.

Chauncey G. Parker, Esq., Ralph H. Hallett, Esq., and Joseph J. Brown, Esq., for United States of America and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., Frederick H. Wood, Esq., and W. W. Robison, Esq., for Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Co.

(From page 5, last line, to page 6, line 3)

MR. BROWN: Counsel for both parties offer the stipulation of facts which was marked as Exhibit A in the previous proceeding.

THE MASTER: That is admitted, as there is no objection.

Exhibit A, being the printed Stipulation of Facts abridged as shown in plaintiff's Statement for Abridgment of Exhibits.

(From page 6, lines 6 to 9, inclusive)

Counsel for both parties offer a first supplemental stipulation of facts marked as Exhibit B in the previous proceeding.

THE MASTER: That is accepted and entered in evidence, and will be similarly treated.

Exhibit B, being the printed First Supplemental Stipulation of Facts.

(From page 6, lines 10 to 16, inclusive)

MR. BROWN: Counsel for both parties offer in evidence all of the contracts in controversy, which appear as exhibits to the answer of the Bethlehem Steel Corporation, et al., in the equity case, No. 3315. The contracts in question are referred to in the said answer as Exhibits 5 to 73 inclusive, and were offered in the previous proceedings as Exhibit C.

THE MASTER: They are admitted.

(A statement as follows concerning the contracts in controversy:)

The contracts in controversy, abridged by omission of parts irrelevant to the appeals herein, are Exhibits 1-A, 2-A, 3 to 16, inclusive, and 19 annexed to the Statement of Claim as included in this transcript of the record.

(From page 6, line 17, to page 7, line 11)

MR. BROWN: Counsel for both parties offer a memorandum of an agreement of counsel for incorporation in the record, which agreement was marked as Exhibit D in the previous proceeding.

THE MASTER: It is admitted.

MR. BROWN: It is further agreed by counsel for all parties that the reference in paragraph 3 of the stipulation which has been offered as Exhibit D is to the tankers built under Contract No. 178, and that the disputed item is the item of $199,049.07, which appears at page 15, para-

graph 20, of the printed stipulation of facts, Exhibit A.

It is further agreed that the items set up by way of set-off and counter claim in the affidavit of defense of the Fleet Corporation in Action No. 11970, listed in Exhibit D under the heading Miscellaneous Accounts Receivable, $55,128.34, are to be adjusted by Bethlehem giving credit to the Fleet Corporation for one half of this amount and the Fleet Corporation waiving any claim to the balance.

There has been no agreement reached as to whether or not this item shall carry interest.

Exhibit D, as follows:

Bethlehem v. Fleet Corporation

MEMORANDUM OF AGREEMENT OF COUNSEL

1. Bethlehem waives all claims on requisitioned ships and the Fleet Corporation and the Government waive all claims for overpayments on requisitioned ships.

2. Bethlehem waives any claim for unpaid balance of the appropriations for plant improvements and facilities, and the Fleet Corporation and the Government waive any claim to the plant improvements and facilities, including the office building at Bethlehem, and if necessary agree to give bills of sale and deeds of conveyance vesting absolute title in Bethlehem.

3. Fleet Corporation and the Government concede one-half of Bethlehem's claim for replacing alleged defective work on the Cabrille

and two other tankers, and Bethlehem agrees to accept one-half of its claim in full on that account.

4. Fleet Corporation and the Government concede one-half of Bethlehem's claim for expenses incurred after September 7, 1920, in connection with cancelled ships under contract No. 465, and Bethlehem agrees to accept one-half of its claim in full on this account.

5. Fleet Corporation and the Government concede the amount of Bethlehem's claim on the contract for the Curtis marine propelling equipment, and waives any claim for over-payment or off-set on that contract.

6. Bethlehem concedes that the unclaimed straight wages and unclaimed retroactive wages, including increased wages included in unclaimed straight wages, if any, are not to be charged as cost on account of contract ships.

7. The items scheduled in Exhibit "F" of the Government's Bill in Equity are settled as follows:

Material sold to shipbuilder; Bethlehem concedes $6,400; Fleet Corporation and the Government waive the balance of the claim on this item.

Unbilled material: This has been adjusted in the stipulation by increasing the cost of contract ships by that amount and increasing the credit to the Fleet Corporation or the Government for the payments on account in a like amount.

Carfare at Sparrows Point and *Idle Plant at Sparrows Point:* Bethlehem concedes these items.

Cost of Perley Morse audit: Fleet Corporation and the Government waive any claims on this item.

8. Bethlehem waives any claim for damages due to delay in completing the audit and the Fleet Corporation and the Government waive any claim for additional expenses in connection with making the audit on account of Bethlehem's alleged failure to keep proper records.

9. Bethlehem concedes interest at the rate allowed by the bank on its deposits with respect to the $8,000,000 advanced by the Fleet Corporation or the Government, the amount of the interest on this item being $132,770.91.

10. The Fleet Corporation and the Government concede that royalties paid on Curtis turbines and Massachusetts Soldiers' Bonus Tax are proper items to be charged as cost on contract ships.

(From page 1017 to page 1020, line 11)

Meeting held at the office of the Special Master and Referee, William Clarke Mason, Esq., 2107 Fidelity-Philadelphia Building, 123 South Broad Street, Philadelphia, on Monday, May 11, 1931, at 3:30 p. m. D. S. T.

Present:

William Clarke Mason, Esq., Special Master and Referee.

Joseph J. Brown, Esq., for the Government and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., for Bethlehem Companies.

It is stipulated between counsel for Bethlehem and counsel for Emergency Fleet Corporation and the Government that with respect to all of the contracts involved, a complete audit of the total cost of the vessels included in the respective contracts and of the revised estimated cost thereof, was made by the Emergency Fleet Corporation and the said audit was completed on or about the 1st day of September, 1922.

MR. EVANS: I offer in evidence Paragraph 207 of the statement of claim in the case of Bethlehem Shipbuilding Corporation, Ltd., against the United States Shipping Board Emergency Fleet Corporation (No. 11970), reading as follows:

"TWO HUNDRED SEVENTH: The plaintiff completed said six equipments and said six sets of spares in accordance with the terms and provisions of said contract and said plans and specifications and delivered the same complete to the defendant f. o. b. cars, as provided in Section 2 of Article I of said contract, on or before the first day of February, 1921. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said equipments and said spares as constructed in accordance with said plans and specifications and the terms and conditions of said contract."

In connection with that offer I offer the corresponding paragraph of the affidavit of defense, but only for the purpose of showing that the averments of the statement of claim are not denied:

"TWO HUNDRED AND SEVENTH. In answer to Paragraph Two Hundred and Seventh of the Statement of Claim, defendant avers that it took possession of and accepted said equipments and spares upon behalf of its said principal."

I also offer Paragraph 210 of the statement of claim in the same case, as follows:

"TWO HUNDRED TENTH: After the termination of said agreement of lease, in the latter part of the year 1919, the defendant, in accordance with the terms thereof, removed said barracks and on or about the 29th day of March, 1920, entered into an agreement with the plaintiff whereby the plaintiff agreed to provide for the restoration of said land and the defendant agreed to reimburse the plaintiff for the cost thereof. In accordance with said agreement, and at the direction and with the approval of the defendant, the plaintiff procured the restoration of said land to its original condition at a total cost to the plaintiff of two thousand five hundred and seventy dollars ($2,570)."

Paragraph 210 is admitted without qualification in the affidavit of defense.

I offer also Paragraph 211 of the statement of claim in the same case, as follows:

"TWO HUNDRED ELEVENTH: Upon the restoration of said land to its original condition as aforesaid, there became due from the defendant to the plaintiff the sum of two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the plaintiff from the defendant, with interest thereon from the first day of June, 1920."

I offer Paragraph 211 of the affidavit of defense, but only for the purpose of showing that the averments of the corresponding paragraph of the statement of claim are not denied:

"TWO HUNDRED AND ELEVENTH: In answer to Paragraph Two Hundred and Eleventh of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $2,570.00 against the balance owing by it to defendant upon the causes of action hereinafter set forth in defendant's Set-off and Counterclaim. Defendant avers that the agreements referred to in plaintiff's Twentieth Cause of Action were made by defendant upon behalf of its principal, the United States of America."

THE MASTER: There being no objection, the offers are all admitted.

(From page 1023, last line, to page 1024 line 7, inclusive)

It is stipulated between counsel for Bethlehem and counsel for the Emergency Fleet Corporation that Bethlehem Shipbuilding Corporation, Ltd., is a corporation organized and existing

under the laws of the State of Delaware, and that the United States Shipping Board Emergency Fleet Corporation is a corporation organized pursuant to Section 11 of the Act of Congress approved September 7, 1916, known as the Shipping Act 1916; that it is a corporation existing under and by virtue of the laws of the District of Columbia.

Dated, April 15, 1939.

RICHARDSON DILWORTH
Attorneys for Plaintiff-Appellant Bethlehem Shipbuilding Corporation, Ltd.

PLAINTIFF'S STATEMENT FOR ABRIDGEMENT (1) FROM EXHIBITS ATTACHED TO THE STATEMENT OF CLAIM, (2) FROM OTHER EXHIBITS

Pursuant to Rule 75 (e) of the Federal Rules of Civil Procedure, the plaintiff indicates the following as the matter to be omitted from those Exhibits which the plaintiff has designated to be included in the record on its appeal from the judgment in the above-entitled action:

(1) *Matter to Be Omitted from Exhibits Attached to the Statement of Claim:*

From Exhibit 1-A omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXIX, inclusive;

From Exhibit 2-A omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXIX, inclusive;

From Exhibit 3 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive.

From Exhibit 4 omit Articles III to XIII, inclusive, the first paragraph of Article XIV headed "Liens and Taxes", and Articles XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 5 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 6 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV, XXIV-A and XXVI to XXVIII; inclusive;

From Exhibit 7 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 8 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 9 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV, XXIV-A and XXVI to XXVIII, inclusive;

From Exhibit 10 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 11 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 12 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 13 omit Articles II to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 14 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 15 omit Articles III to XIX, inclusive, XXII, XXIII, XXV to XXXII, inclusive, XXXIV and XXXV;

From Exhibit 16 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive; together with Exhibit "A" attached to said Exhibit 16;

From Exhibit 19 omit paragraph 3 of Article I, together with the heading "Progress Shipment and Storage", paragraphs 3, 4(a), 4(b), 4(c), 5(a) to 5(f), inclusive, 6(a), 6(b) and 7 of Article II and Articles III to XI, inclusive, together with the letter dated October 17, 1919, and the paragraph marked VII, found on pages 542 to 545, inclusive, of the Statement of Claim.

(2) *Matter to Be Omitted from Other Exhibits Designated by the Plaintiff to Be Included in the Record of Its Appeal:*

From Exhibit A omit the following:

From the Index all following "Contract No. 465 S. C.—(page) 65";

From pages 1 and 2 omit the titles of the actions at law Nos. 11976, 11974 and 11972;

From pages 65 to 72, inclusive, omit paragraphs 119 to 126, inclusive, and insert in lieu thereof following the heading "East Coast Contract No. 465 S. C. (Bethlehem Ship's Sixteenth Cause of Action)" as follows:

> See First Supplemental Stipulation of Facts, Exhibit B;

Beginning on page 72 with the heading "Contract for Plant Facilities at Sparrows Point" omit in toto to the end of paragraph 315 on page 136;

Omit Exhibits A to D, inclusive, attached to said Exhibit A.

After the exhibit heading "Exhibit E" insert:

> Exhibit E is the same as Exhibit G109 shown elsewhere in this transcript.

and omit the entire text of Exhibit E.

After the exhibit heading "Exhibit F" insert:

> Exhibit F is the same as Exhibit B29 shown elsewhere in this transcript.

and omit the entire text of Exhibit F.

After the exhibit heading "Exhibit G" insert:

> Exhibit G is the same as Exhibit G107 shown elsewhere in this transcript.

and omit the entire text of Exhibit G.

After the exhibit heading "Exhibit H" insert:

> Exhibit H is the same as Exhibit B30 shown elsewhere in this transcript.

and omit the entire text of Exhibit H.

After the exhibit heading "Exhibit I" insert:

Exhibit I is the same as Exhibit G125 shown elsewhere in this transcript.

and omit the entire text of Exhibit I.

After the exhibit heading "Exhibit J" insert:

Exhibit J is the same as Exhibit G127 shown elsewhere in this transcript.

and omit the entire text of Exhibit J.

After the exhibit heading "Exhibit K" insert:

Exhibit K is the same as Exhibit B14 shown elsewhere in this transcript.

and omit the entire text of Exhibit K.

After the exhibit heading "Exhibit L" insert:

Exhibit L is the same as Exhibit G132 shown elsewhere in this transcript.

and omit the entire text of Exhibit L.

After the exhibit heading "Exhibit M" insert:

Exhibit M is the same as Exhibit G134 shown elsewhere in this transcript.

and omit the entire text of Exhibit M.

After the exhibit heading "Exhibit N" insert:

Exhibit N is the same as Exhibit G135 shown elsewhere in this transcript.

and omit the entire text of Exhibit N.

RICHARDSON DILWORTH,
Attorney for Plaintiff-Appellant, Bethlehem Shipbuilding Corporation, Ltd.

(Continued on page 815, Volume II).

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469281
S.C.

Vol. II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940 41

No. 368 8

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIP BUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, ET AL.

No. 369 9

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

vs.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 22, 1940
CERTIORARI GRANTED OCTOBER 14, 1940

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VOLUME II

EVIDENCE BEFORE WILLIAM CLARKE MASON, ESQ., SPECIAL MASTER

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315 March Sessions, 1925

In Equity

The United States of America,
Complainant,

v.

Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

No. 11970. December Sessions, 1925

At Law

Bethlehem Shipbuilding Corporation, Ltd.

v.

The United States Shipping Board Emergency Fleet Corporation

Hearing before William Clarke Mason, Esq., Special Master and Referee, held in Room 313, Federal Building, Ninth and Market Streets, Philadelphia, Monday, March 30, 1931, at 10 o'clock A. M.

Present:

William Clarke Mason, Esq., sitting as Special Master in No. 3315, March Sessions, 1925, in Equity; and as Referee, by agreement, in Nos. 11970, 11972, 11974 and 11976, December Sessions, 1925, at Law.

Chauncey G. Parker, Esq., Ralph H. Hallett, Esq., and Joseph J. Brown, Esq., for United States of America and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., Frederick H. Wood, Esq., and W. W. Robison, Esq., for Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Co.

THE MASTER: The following stipulation is agreed to by counsel for all parties and reads as follows:

Bethlehem Shipbuilding Corporation, Ltd., vs. United States Shipping Board Emergency Fleet Corporation.

District Court of the United States for the Southern District of New York, at Law, No. 33369.

United States of America vs. Bethlehem Shipbuilding Corporation, Ltd., et al.

District Court of the United States for the Eastern District of Pennsylvania, in Equity, No. 3315, March Term, 1925.

STIPULATION

Counsel representing the respective parties to the above-entitled proceedings hereby agree as follows:

1. Defendants to said proceeding now pending in the United States District Court in Philadelphia will promptly file their answers therein. As soon as practicable the Bethlehem Shipbuilding Corporation, Ltd., will begin in the United States District Court in Philadelphia a suit similar to its pending suit in the District Court in New York. The Fleet Corporation will enter a general appearance in such suit against it in Philadelphia and file an answer, it being understood that in such suit the defense of the Statute of Limitations will not be interposed by the defendant, except to the extent, if any, that it could be successfully interposed in the existing New York suit, the defendant thus to have no greater rights by way of the defense of the Statute of Limitations than it has in the existing New York suit.

The defendant will, within the time limited by court order or agreement, and if and after the Fleet Corporation's motion to dismiss the New York bill of complaint of Bethlehem has been denied, file its answer in the New York suit, so that issue may be

joined and the case placed in the calendar of the court, but the New York suit will thereafter remain passive and no proceedings will be taken therein pending the trial of the two suits in the District Court in Philadelphia.

2. The two suits in the District Court in Philadelphia will be tried together and without a jury, and all evidence taken and all stipulations of facts will be available in both cases and in the New York suit, in case it should be tried, subject always to objections as to relevancy. The two cases will be submitted to the District Court in Philadelphia simultaneously and counsel will cooperate in endeavoring to obtain from the Court findings and conclusions covering all disputed questions of fact and law, regardless of the particular grounds upon which its decree may be based.

3. In the event that the said proceeding to be commenced by the Bethlehem Shipbuilding Corporation, Ltd., in Philadelphia should be dismissed on the ground that its claim, if any, lay against the United States, all facts stipulated in either of the said proceedings in the District Court in Philadelphia, as well as all relevant evidence and all unreversed findings of fact in said proceedings, shall be available to said Bethlehem Shipbuilding Corporation, Ltd., in any subsequent proceedings to enforce its claim.

4. In case the District Court in either of the proceedings in Philadelphia shall find as a fact that no sum is owing by defendants therein to the United States or to the Fleet Corporation, and that upon the contrary there is a balance owing to defendants, or any of them, by the United States, or by the Fleet

Corporation, but is precluded from entering judgment therefor because of jurisdictional or other reasons, and such finding is affirmed on appeal, counsel for the Fleet Corporation and the United States will recommend to the proper authorities that the sum, if any, shown to be due by said finding shall be paid.

5. Nothing in this stipulation shall in any way affect the right of any party to appeal from any decision of said District Court in Philadelphia.

6. Promptly upon the filing of Bethlehem's answer in the Government's suit, counsel and experts on both sides shall cooperate in an effort to agree as far as possible upon the facts involved in the various controverted questions."

MR. BROWN: Counsel for both parties offer the stipulation of facts which was marked as Exhibit *A* in the previous proceeding.

THE MASTER: That is admitted, as there is no objection.

MR. BROWN: We suggest that that need not be copied into the record, but be attached as part of the record.

Counsel for both parties offer a first supplemental stipulation of facts marked as Exhibit B in the previous proceedings.

THE MASTER: That is accepted and entered in evidence, and will be similarly treated.

MR. BROWN: Counsel for both parties offer in evidence all of the contracts in controversy, which appear as exhibits to the answer of the Bethlehem Steel Corporation, et al., in the equity case, No.

3315. The contracts in question are referred to in the said answer as Exhibits 5 to 73 inclusive, and were offered in the previous proceedings as Exhibit C.

THE MASTER: They are admitted.

MR. BROWN: Counsel for both parties offer a memorandum of an agreement of counsel for incorporation in the record, which agreement was marked as Exhibit D in the previous proceeding.

THE MASTER: It is admitted.

MR. BROWN: It is further agreed by counsel for all parties that the reference in paragraph 3 of the stipulation which has been offered as Exhibit D is to the tankers built under Contract No. 178, and that the disputed item is the item of $199,049.07, which appears at page 15, paragraph 20, of the printed stipulation of facts, Exhibit A.

It is further agreed that the items set up by way of set-off and counter claim in the affidavit of defense of the Fleet Corporation in Action No. 11970, listed in Exhibit D under the heading Miscellaneous Accounts Receivable, $55,128.34, are to be adjusted by Bethlehem giving credit to the Fleet Corporation for one half of this amount and the Fleet Corporation waiving any claim to the balance.

There has been no agreement reached as to whether or not this item shall carry interest.

Counsel for both parties offer an additional stipulation of agreed facts, marked as Exhibit E in the previous proceeding.

THE MASTER: It is admitted. In view of the practice under the Practice Act of 1915 of Pennsyl-

vania, the Master and Referee rules that it will be the duty of counsel for the parties to read into the record such portions of the statements of claim and/or the affidavits of defense as they conceive to be admissions of facts available as evidence in these proceedings, and counsel will be permitted to do that at the close of the testimony, selecting from the pleadings such portions of them as they desire to have made part of the record in these proceedings. The Master rules that, under the equity practice of the United States, there is no necessity for reading into the record or placing in the record admissions in the equity case. The Master will rule that in the equity case he is entitled to take at full face value all admissions of the answer.

MR. BROWN: Mr. Master, it appears at page 430 of the record of the previous hearing that the Government asked that the Prayer for Relief in the Bill of Complaint filed in the equity proceedings should be amended in a certain respect. There was no objection to the amendment and it was allowed. In order that you should have the entire record before you, it might be well to repeat the motion for an amendment and show what took place.

THE MASTER: Has there ever been any written amendment filed formally, or is it a matter of record?

MR. BROWN: No, just a matter of record. It was stated by counsel for the Government in the previous proceeding that "For the principal purpose of not taking our friends, counsel for the Bethlehem Companies, by surprise, I would like to ask at this time that we be permitted to amend our Prayer for Relief in the Bill, which as far as the amend-

ment is concerned is more or less of a formality so far as our right to amend is concerned, but we have stated in the Prayer for Relief that we ask the Court to fix and determine the reasonable and proper profit to be allowed the Bethlehem Shipbuilding Corporation, and we would like to insert in the provisions for relief relating to a reasonable and proper profit the further statement 'if any.' That amendment would relate to paragraph two and paragraph six of the Prayer for Relief, and I can state on the record, if the Master thinks that is proper, how those paragraphs will read according to the proposed amendment. The second paragraph will read: 'That it be decreed that the terms and provisions in the contracts herein alleged and specified in Exhibit B annexed, in so far as they provide for unreasonable and unconscionable profits in the guise of "fixed fee for profits" or "half savings" or otherwise, are void and unenforceable and that this Court fix and determine a reasonable and proper profit, if any, to be allowed the defendant Bethlehem Shipbuilding Corporation, Ltd., upon and with respect to each of said contracts, and that said defendant be required and directed to account to the complainant for all moneys of the United States received by it on account of profits and to pay to the complainant the excess received over and above such fair and reasonable profit, if any, allowed by said Court.'

Paragraph Six of the Prayer for Relief is amended to read as follows: 'Sixth. That the defendants Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., and each of them, make discovery to the complainant of all the financial transactions had between them with respect to the Ship-

building contracts designated in Article-Thirty-Second to the Bill, and particularly with respect to the distribution and allotment between said respective companies of the moneys paid to the defendant Bethlehem Shipbuilding Corporation, Ltd., by the complainant, through its agency the Fleet Corporation, in excess of such profit, if any, as may be allowed by this Court upon each and all of said Shipbuilding contracts, and also of all moneys of the United States so paid to said defendant under mistakes of law, mistakes of fact, wrongful construction of the terms of said contracts, and other mistakes made by the United States Shipping Board, the Fleet Corporation, or any of their respective officers, agents or employees.' ''

There having been no objection to the amendment at the previous proceeding, it was allowed by Mr. Roberts.

THE MASTER: I understand that that amendment has been allowed and the pleadings now stand as so amended, without objection.

The Master and Referee rules that, for the purpose of the hearing before him, no part of the testimony taken before Owen J. Roberts, as Master and Referee, and none of the exhibits offered before him, will be considered as a part of the record for his consideration, unless specifically offered in evidence or referred to by counsel in so far as they appear in the previous record; that where it relates to oral testimony, reference can be made by page and number of the previous record without reading into the record here such oral testimony, and when so referred to it will be considered as a part of the record on this hearing.

HARRY BROWN, having been duly sworn, was examined and testified as follows:

BY MR. BROWN:

Q. Mr. Brown, in order to give the Master a picture of the background involved in this case, there are certain more or less formalities I would like to go through with with you. In the first place, I will ask you about your present occupation. What is your present occupation?

A. Substantially I am retired, but I do take on various lines of work, amongst which is the work in connection with this case at Bethlehem.

Q. In other words, you are employed by Bethlehem at the present time?

A. Yes, sir.

Q. When you mention Bethlehem, do you mean the Bethlehem Steel Corporation?

A. No, sir, the Bethlehem Shipbuilding Corporation.

MR. BROWN: I might say, Mr. Master, that throughout the proceeding we are apt to use the word "Bethlehem" very indiscriminately to apply to all of the Bethlehem companies, including the subsidiaries.

BY MR. BROWN:

Q. How long have you been employed by Bethlehem in connection with the preparation of the trial of this case?

A. Since November, 1924.

Q. The Bethlehem Shipbuilding Corporation, as I understand it, was organized about October 1st, 1917, was it not?

A. Yes, sir.

Q. The Bethlehem Shipbuilding Corporation rep-

resented a consolidation of five shipbuilding companies, did it not?

A. Yes, sir.

Q. And those five shipbuilding companies had been subsidiaries of the Bethlehem Steel Corporation, had they not, prior to the consolidation?

A. I so understood, yes, sir.

Q. For various periods?

A. Yes, sir.

Q. And the Bethlehem Steel Corporation was incorporated in 1904?

A. That I do not know.

MR. BROWN: I think it will be agreed that since the organization of the Shipbuilding Company all of its stock has been owned by the Steel Corporation, except possibly qualifying shares or something of the sort.

MR. EVANS: For the purposes of this case, anyhow, that will be conceded.

MR. BROWN: If we are mistaken; you can correct it.

BY MR. BROWN:

Q. The names of the subsidiaries which were consolidated into the ship company and the location of their respective plants, were as follows, were they not: First was the Union Iron Works. The plant was called Union and was located at San Francisco, California. Next was the Harland & Hollingsworth Corporation. The plant was called Harlan and located at Wilmington, Delaware. At least, when I say the plants were so called, these are the names by which they were commonly known and which are used in this proceeding. Third was the Samuel W. Moore & Sons Corporation, plant known as Moore,

location Elizabethport, New Jersey. Next was the Fore River Shipbuilding Corporation, plant known as Fore River, location Fore River, Quincy, Mass. Next was the Penn-Mary Steel Company, plant called Sparrows Point, located at Sparrows Point, Maryland. That is correct, is it not?

A. They are the shipyards and the locations, yes, sir.

Q. As a result of this consolidation, Bethlehem became the largest shipbuilding concern in the world, did it not?

A. I know of none any larger.

Q. That is both in respect to the number of shipyards and the number of employees?

A. That would be correct.

Q. And each of those subsidiary companies, at the time of the consolidation, had been what was known as an old line shipbuilding company, had it not?

A. Yes, sir.

Q. And by old line is meant a company that had been in the shipbuilding business for a substantial length of time?

A. Established for a number of years.

Q. As distinguished from the many new companies that were being organized during 1917 and the War period?

A. There were probably some prior to that that you would call a yard, because they built a number of ships after the outbreak of the World's War and the demand of the foreign governments for tonnage, which started this thing. It did not only start when the United States entered into the War.

Q. In December, 1917, in what capacity were you

employed by the Shipbuilding Company? What was your position?

A. In December, 1917, my position was technical manager.

Q. And Admiral F. T. Bowles at that time was manager of the Division of Steel Ship Construction of the Fleet Corporation, was he not?

A. I understand that is so.

Q. Incidentally, he died some time before the hearing before Judge Roberts, did he not?

A. Yes, sir.

MR. BROWN: It is probably unnecessary, but I would like to call attention to the fact that that hearing took place during the months of May and June, 1929.

BY MR. BROWN:

Q. Capt. G. S. Radford at that time was manager of the Contract Division of the Fleet Corporation, was he not?

A. That is my understanding.

Q. And at that time Charles Piez was Vice-President and General Manager of the Fleet Corporation, was he not? These are merely formal things and I am putting them in this way really to get through, more than anything else.

A. I daresay that that was so.

BY MR. EVANS:

Q. Your only doubt is as to the question of the exact date?

A. As to the exact date.

BY MR. BROWN:

Q. May I ask it in this way: at the time of the negotiations relating to the contracts in controversy, Piez was Vice-President and General Manager of the Fleet Corporation, was he not?

A. It was either a whole or a part of the time, yes, sir. I want to get this straight. Admiral Harris was in there for some time, and I do not recall just what his position was, whether he ranked Mr. Piez or not.

Q. Piez came in as the general manager about the middle of December, 1917, did he not, according to your recollection?

A. I do not know.

Q. After he became general manager Piez was in complete executive charge of all the affairs of the Fleet Corporation, was he not?

A. That was my understanding.

MR. EVANS: I am wondering whether this witness really knows these things. This man was working for Bethlehem.

MR. BROWN: Your own witness testified to this effect last time.

MR. EVANS: If it is important to get those facts accurate, why do you not get them from your own records?

MR. BROWN: I was afraid there might be some doubt about getting Mr. Piez.

MR. EVANS: You do not have to have Mr. Piez. You have the records.

BY MR. BROWN:

Q. Do you know what Mr. Piez's business had been before he joined the Fleet Corporation?

A. He was the president of the American Link-Belt Company. That is my recollection.

Q. And he became general manager of the Fleet on the resignation of Admiral Harris, did he not? Do you remember?

A. No, I do not.

Q. In the negotiations relating to these contracts in controversy, Bethlehem was represented by you and Joseph Powell, was it not?

A. Yes, sir.

Q. That was with respect to the active negotiations relating to the contracts on controversy?

A. Yes, sir.

Q. And likewise the Fleet Corporation was represented by Admiral Bowles and Mr. Radford, was it not?

A. Yes, sir.

Q. And whatever connection Mr. Piez had with the transaction was purely in a supervisory capacity, was it not?

A. That I could not tell you.

Q. Don't you know what he had to do with the negotiations relating to these contracts?

A. No. I never had any conference with Mr. Piez on these contracts. That was handled directly between Mr. Powell and Mr. Piez. My association was entirely with Admiral Bowles or Mr. Radford and Mr. Powell.

Q. Mr. Powell became president of the Fore River Shipbuilding Company in 1914, did he not?

A. Yes, sir.

Q. And he remained as president of the Fore River Company until the organization of the Shipbuilding Company, did he not?

A. The Bethlehem Shipbuilding Corporation, yes.

Q. Which I have referred to throughout as the Shipbuilding Company for brevity. On the organization of the Shipbuilding Company Mr. Powell be-

came its vice-president and operating manager, did he not?

A. Yes, sir.

Q. And he was in charge of all the activities of the Shipbuilding Company, was he not?

A. Yes, sir.

Q. Do you remember how long he remained with the Shipbuilding Company? Do you remember when he left its employment?

A. I can only give you the best of my recollection on that, Mr. Brown.

Q. I will not bother you if you do not remember.

A. I do not remember exactly when it was.

Q. At the time of the negotiations relating to the contracts in controversy, Powell was considered as a very able and experienced shipbuilder, was he not?

A. Yes, sir.

Q. He was regarded as one of the ablest and most experienced in the United States, was he not?

A. He was classed amongst the ablest, yes, sir.

Q. And as I remember, you were employed by the Fore River Shipbuilding Company from 1903 until the organization of the Shipbuilding Company; is that correct?

A. Yes, sir.

Q. And during the entire period of your employment by the Fore River Company, you were in charge of all technical work, were you not?

A. Yes, sir.

Q. And that included contracts and sales, did it not?

A. It did.

Q. On the organization of the Shipbuilding Company you became technical manager of that company, did you not?

A. Yes, sir.

Q. And you remained in that capacity until you left its employment, did you not?

A. Yes, sir.

Q. And you left its employment, as I remember, in June, 1922; is that correct?

A. Yes.

Q. During the latter part of October, during November and the early part of December, 1917, you were engaged in organizing your technical department, were you not?

A. Yes, sir.

Q. That technical department was located at Bethlehem, Pennsylvania?

A. Yes, sir.

Q. About how many men were in that technical department? There were several hundred, were there not?

A. Not at that time, no.

Q. But you were building up?

A. Building up. We had a very few men at that time and we were building up to a staff of somewhere around 400 people.

Q. You were building up to a force of about 400; is that correct?

A. Yes, I should say that is substantially correct.

Q. And the building up of that organization took a great deal of your time during that period, did it not?

A. Yes.

Q. In fact, it occupied your time almost exclusively, did it not? Can you hear the question?

A. I understand your question, but it is a difficult one to answer when you say "almost exclusively."

Q. You do not have to look ahead too far.

A. No, there were other matters that required attention that were under way, that had to be attended to, so you did not put your time exclusively upon the organization, because it did not permit it.

Q. It occupied a great deal of your time?

A. It occupied a great deal of time.

Q. Do you remember at the hearing before Judge Roberts you testified, in answer to questions of Mr. Evans, at great length about the duties that were then imposed on you in connection with the organization of that department, and how it was extremely difficult for you to find time to do anything else?

A. Yes.

Q. That is correct, is it not?

A. Substantially so.

Q. And prior to December 6 and during the period that I have referred to, you were also engaged in negotiating and consummating the destroyer contracts of December 6th, were you not?

A. Yes, sir.

MR. BROWN: I would like to offer in evidence at this point the two destroyer contracts dated December 6, 1917, executed between the Bethlehem Shipbuilding Corporation, Ltd. and the United States, which were offered in the previous proceeding as Exhibits G-157 and G-158.

THE MASTER: They will be admitted.

BY MR. BROWN:

Q. They are the destroyer contracts to which you referred, are they not?

(Witness shown Exhibits G-157 and G-158.)

A. That is the 45 of Fall River and this is the 40 at Union.

Q. Those are the destroyer contracts which you were engaged in negotiating during the period that I have referred to, are they not?

A. Yes, sir.

Q. The Bethlehem Companies had previously done business with the Navy Department of the United States, had they not?

A. Yes, sir.

Q. The cost definition referred to in these contracts was taken from the standard form of the Navy cost-plus-fee contracts which had been in use for a considerable time prior to December, 1917, was it not?

A. The cost definition?

Q. You were familiar with the Navy contract, were you not?

A. With this Navy contract?

Q. With the form of contract used by the Navy prior to December, 1917?

A. According to the best of my recollection, this is the first contract ever made on that basis.

Q. I am asking if you were familiar with the form of contract used by the Navy Department prior to December, 1917, in so far as it defined cost. Had your company had previous transactions with the Navy Department?

A. Yes.

Q. In those contracts there was also a provision relating to the determination of cost, was there not?

A. No, sir.

Q. Not always?

A. No, sir.

Q. Well, in the Navy contracts which were on a cost-plus-fee basis there was such a provision, was there not?

A. Prior to the war conditions there were not. They were all lump sum contracts.

Q. They were all on a lump sum basis?

A. Yes, sir.

Q. Your own company had a contract for destroyers with the Navy Department prior to December, 1917, had it not?

A. Yes, sir.

Q. The Fore River Company?

A. Yes, sir.

Q. And in those contracts there was a definition of the cost, was there not?

A. Only after those contracts had been moved from a lump sum basis to a cost-plus basis.

Q. There was in those contracts a definition of cost?

A. Not until they were changed to the cost-plus basis.

Q. And when was that change made?

A. According to my recollection it was after we entered into the War, and I should say, according to my recollection, it would be some time between June, 1917, and December, 1917.

Q. The negotiation of those Navy contracts took a considerable amount of your time during the period in question, did it not?

A. I should not say a considerable amount of time, no, sir, in relation to the total period of time for which those contracts were under consideration.

Q. At any rate, between the organizing of your technical department and the negotiation of the destroyer contracts, you had only a small amount of time for any other work which had to be done by your department, and that other work for the most part had to be done at night times, did it not?

A. I worked considerable at night, yes.

Q. Will you answer the question? (Question read) Is that a fair statement?

A. I do not know whether it is or not, but, nevertheless, the destroyer contracts, in so far as the price, terms and conditions of the contract, had been settled long before December 6, 1917, but we had considerable difficulty in getting the Navy Department to get them through the printing office and get them in shape for signature, so it did not take very much of the time of the Bethlehem officials from the time of the consolidation of the shipyards until the time of the execution of these contracts.

Q. Do you remember testifying at the hearing before Judge Roberts that you had only a small amount of time for other work, that had to be done between times and mostly at night times to get things together to do any kind of business at all outside of your organization at that time?

A. I do.

Q. That is a correct statement, is it?

A. Yes.

Q. Your technical department was divided into three divisions, was it not, the Contract and Sales Division, the Technical Division and the Estimating Division? Don't you remember?

A. Yes.

Q. It was?

A. Yes.

Q. And the Estimating Department was created and existed for the purpose of making whatever cost estimates might be required by Bethlehem, was it not?

A. That was the object in creating an estimating department.

Q. During the entire time that you were employed by the Fore River Shipbuilding Company until about a year before the organization of the Shipbuilding Company, Mr. Schulze had been the chief estimator at Fore River, had he not?

A. During the entire period?

Q. During the entire time that you were employed by the Fore River until about a year before the organization of the Shipbuilding Company?

A. Yes, that is correct.

Q. And during that period Mr. Schulze had been actively in charge of all estimating for that company, had he not?

A. No, not during the entire period.

Q. With the exception of about a year?

A. No, there was probably several years. He did not go with the Fore River Shipbuilding Corporation when I went there. It was some time later.

Q. But for several years prior to December, 1917, with the exception of the year immediately preceding December, 1917, Mr. Schulze had been chief estimator at Fore River, had he not?

A. That is correct.

Q. And at Fore River he was under your supervision as head of the Technical Department, was he not?

A. Head of the Estimating Department.

Q. Mr. Schulze, as head of the Estimating Department, was under your supervision as head of the Technical Department?

A. That is right, yes, sir.

Q. And the same thing occurred after the formation of the Shipbuilding Company, did it not?

A. Yes.

Q. In other words, he was head of the Estimating Division, under your supervision?

A. That is right.

Q. What are Mr. Schulze's initials?

A. H. H. Schulze.

Q. Mr. Schulze is the gentleman right here, is he not (indicating)?

A. Right there, yes.

Q. During the entire time that Mr. Schulze was chief estimator at Fore River, he and you were in practically daily contact, were you not, with respect to matters of estimating?

A. Yes.

Q. A very close business association existed between you two at that time, did it not?

A. Yes.

Q. And you regarded Mr. Schulze as a very able and experienced estimator, did you not?

A. I did.

Q. And a very careful estimator?

A. Yes.

Q. What is Mr. Schulze's present occupation?

A. I do not know.

Q. But he remained as chief estimator during the entire time you were employed by the Shipbuilding Corporation; in other words, until June, 1922?

A. Yes.

Q. And the very close business association which had existed between you and Mr. Schulze at Fore River was continued at Bethlehem, Pennsylvania, was it not?

A. It was.

Q. Admiral Bowles had been president of the Fore River Company from 1903, if you can remem-

ber, until the spring of 1914, when Mr. Powell came in as president, did he not?

A. He was there from 1903, but my recollection is that he left in 1913 and then there was an interval between his leaving and the appointment of Mr. Powell.

Q. At the time of the negotiations relating to the contracts in controversy, you and Admiral Bowles knew each other very well, did you not?

A. Yes, sir.

Q. Tell us where you had come into business association with the Admiral and the years, if you will, in a general way. In other words, about how long had you known him?

A. That is just what I was trying to recall. I think it was in about 1903 that I started association with Admiral Bowles at Washington, and I was with him substantially continuously until he retired as president of the Fore River plant.

Q. In what way were you associated with him in Washington?

A. I was chief draftsman and he was the chief naval constructor.

Q. In other words, you were on Government work at that time?

A. Yes, sir.

Q. And did that association last for several years at Washington?

A. Yes.

Q. And then you were associated with him in turn at Fore River until he left Fore River?

A. Yes, sir.

Q. And for a considerable part of the time that you were at Fore River you were vice-president of that company, were you not?

A. Yes, sir.

Q. There was every reason to suppose, was there not, that at the time of the negotiations referred to, Admiral Bowles had complete confidence in your ability as a ship estimator, as well as in your integrity?

MR. EVANS: That is objected to.

THE MASTER: It is difficult for this witness to say what Admiral Bowles had in his mind.

BY MR. BROWN:

Q. I can put it in a different way. Was there any reason to suppose that at the time of the negotiations to which I have referred Admiral Bowles had any reason to suppose that you were not a very skilful and experienced ship estimator?

MR. EVANS: That is objected to. That is a matter for the Master. That is an inference for the Master to draw, not the witness.

THE MASTER: I think I will have to sustain that objection, because we will have to get the facts from the witnesses and leave the inferences to be drawn by the Master.

BY MR. BROWN:

Q. During the time of your association with Admiral Bowles he had ample opportunity, did he not, to determine your qualifications as a shipbuilder and estimator of costs?

A. Yes, sir.

Q. Did anything occur during your acquaintance with Admiral Bowles to indicate that he did not have complete confidence in your veracity and integrity with respect to matters of business?

A. No, sir.

Q. Nothing?

A. There was nothing that came up, so far as I know.

Q. Had you any reason to suppose that Admiral Bowles did not have complete confidence in your veracity and integrity in matters of business?

A. No.

Q. Right on that point, at that time you had had a great deal of experience yourself in matters of shipbuilding, had you not?

A. Yes, sir.

Q. At the time of the negotiations in question Admiral Bowles and Mr. Powell were well acquainted, were they not?

A. Yes, sir.

Q. They had been associated together for many years, had they not?

A. Yes, sir.

Q. And Admiral Bowles likewise had had ample opportunity to determine the qualifications of Mr. Powell as a shipbuilder, had he not?

A. I should say yes.

Q. It is my understanding that early in November you were requested by Powell to prepare for a shipbuilding program for such ships as Bethlehem might be required to build for the Fleet Corporation up to the capacity of its plants; were you not?

A. Yes.

Q. And you then proceeded to prepare a diagram or a chart, did you not?

A. Yes.

Q. The chart you prepared is the paper which I show you, which has been offered in evidence in the previous proceedings as Exhibit G-34½, is it not?

A. Yes, sir, that is it.

MR. BROWN: I would like to offer that chart as Exhibit G-34½.

THE MASTER: It is admitted.

BY THE MASTER:

Q. This is the original chart that you actually prepared yourself, and the pencil marks and figures and letters on it are your own handwriting, are they?

A. Yes, sir.

Q. In preparing the chart, it was your understanding that it was to be used as the basis of all cost estimates which Bethlehem might be called upon to submit with respect to tank and cargo ships required by the Fleet Corporation, was it not?

A. That was the idea at the time.

THE MASTER: Submit to whom; to the Fleet Corporation only?

MR. BROWN: To the Fleet Corporation.

THE MASTER: I did not know whether they were building for other Governments or not.

MR. BROWN: The Fleet took over the entire capacity of the plant.

BY MR. BROWN:

Q. To clarify the back ground for the Master, the ships which had been under construction at these various shipyards of the Bethlehem Company, prior to August, 1917, had all been requisitioned by the Government, had they not, with the exception of those which were unsuitable for war purposes?

A. Not the Navy ships.

Q. In other words, the Navy ships were not

requisitioned because they were already being built for the Government?

A. Yes.

Q. And it was contemplated subsequently to that time that the entire capacity of your yard as well as those of other shipbuilders throughout the country should be devoted exclusively to Government work, was it not?

A. That is my understanding.

Q. Was the date, "November, 1917" put on that chart after its construction by you?

A. I don't remember.

Q. How about the notation "Material plus wage plus 10 percent. contingent"?

A. That was put on at the time.

Q. That would be put on before the preparation of the chart?

A. Along with the preparation of the chart.

Q. Can you tell us whether the heading "November 1917, plus material plus wage plus 10 percent contingent" was put on there before or after the preparation of the chart?

A. If it wasn't put on at that time it was put on shortly after.

Q. It is likely it was put on shortly after?

A. Well either at the time the chart was prepared or shortly afterwards.

MR. BROWN: I would like to offer the photostatic copies of the chart which were offered in the previous proceeding as Exhibits G 34, 156, 171a and 171b. These Exhibits were prepared by Judge Roberts and represent photostats made of the original chart at the time of

the hearing before Judge Roberts, with the exception of Exhibit G 34.

THE MASTER: There being no objection they will be admitted.

BY MR. BROWN:

Q. The mat or the form that was used by you in the preparation of the original chart was a form which you had on hand at that time, was it not, among your supplies at Bethlehem, Pa.?

A. Yes, sir.

Q. The figures on the left of that chart, running from one to eighteen, represents tonnage, do they not?

A. Yes, sir.

BY THE MASTER:

Q. One to eighteen represents what unit?

A. Thousands of tons; one thousand to eighteen thousand tons.

BY MR. BROWN:

Q. What do the figures on the bottom of the chart represent?

A. They represent dollars.

Q. With respect to total cost, each of these figures represents an increase of $100,000., do they not, each of the figures in each of the squares?

A. No, $10,000.

Q. I mean the figures not the blocks.

A. No, that is a million dollars. That would be $10,000.

Q. Where the nine is located would be $900,000?

A. Yes.

Q. So between each of your written figures there are ten squares each of which is supposed to represent $10,000. of total cost?

A. Yes, sir.

Q. What are the lines running from the lower lefthand corner of the chart to the upper righthand corner of the chart?

A. These lines here represent the total cost of the vessel.

Q. The total cost of what vessel? Will you point out the different designations on those lines and explain to the Master what they represent, the total cost lines?

A. For instance, we will take the 10,000 ton vessel. Go straight across here until you strike the line of the vessel and here it is a cargo vessel and here it is a tanker and then right down at that intersection gives you the total cost.

Q. What I am getting at, you have the upper one of these total cost lines running from the lower lefthand corner of the chart to the upper right hand corner of the chart. What does that line represent? It represents, or is supposed to represent, the total cost of East Coast cargo ships, does it not?

A. Yes.

Q. The line immediately underneath that represents the total cost of West Coast cargo ships, does it not?

A. Yes, sir.

Q. That is the one that is marked "Cargo West, East plus five percent"?

A. Equals the East plus five percent.

Q. The next line underneath that is designated "Tankers East", and is supposed to represent the total cost of tankers to be built on the East Coast?

A. Yes, sir.

Q. The line under that is supposed to represent

the total cost of tankers to be built on the West Coast?

A. Yes, sir.

Q. What are the lines running from the lower righthand corner of the chart to the upper top middle part of the chart?

A. They are the cost per dead weight ton.

Q. These lines are supposed to represent the cost per dead weight ton to correspond with the total cost as shown by the total cost lines, is that correct?

A. Yes.

Q. In other words, that per ton line reading, "Cost per ton cargo" is supposed to correspond with the total cost as shown by the line designated Cargo East", is that correct?

A. Supposed to be.

Q. There is a line on that chart running from over in the lower righthand corner of the chart towards the upper lefthand corner of the chart marked "Hours per ton D. W. January or June, 1922, one equals one hundred"?

A. Yes, sir.

Q. Will you explain what that line represents?

A. That line was put on at a considerable later period and has nothing whatsoever to do with the original proposition.

Q. Were the lines which have been erased and which are marked for identification as B. C. and D. on the Exhibit which has been offered in evidence as Exhibit G-156, put on the chart subsequent to its original construction?

A. They were put on and erased.

Q. Subsequent to its original construction?

A. Yes.

Q. And have nothing to do with the subject relating to the contract ships?

A. No, sir.

Q. Likewise the line which has been identified as E on Exhibit G-156, was plotted subsequent to the preparation of the chart and has nothing to do with the negotiations in controversy?

A. That is right.

Q. Will you explain how this chart is used to determine the cost of a ship we will say of 10,000 dead weight tons?

A. By taking your tonnage at 10,000 and reading across on that line to the intersection of any line here you can get the total cost of the ship, either East Coast or West Coast Cargo Vessel or Tanker, by reading down to your point here.

Q. On the lower line?

A. Yes.

Q. So what would the cost of an East Coast 10,000 ton cargo ship be according to that chart?

A. $1,750,000 or $1,745,000.

Q. And what would be the cost per ton as indicated by that chart?

A. The total cost divided by ten thousand.

Q. As indicated by that chart per ton line what would it be?

A. Around 174½ or 175. The chart was not made with any idea—

MR. BROWN: I didn't ask you anything else.

BY THE MASTER:

Q. I don't think that is clear. You asked what would be the cost per ton and Mr. Brown answered it would be the total cost dividing by ten, I understood?

A. By the tonnage, 10,000.

THE MASTER: It happened to be a 10,000 ton ship you were talking about but I thought it applied, as it was given, to everything.

BY MR. BROWN:

Q. To make it clear, what would be the total cost as shown by the chart of a 10,000 ton East Coast tanker?

A. $2,000,000.

Q. And how would you find the per ton cost of that ship as indicated by the per ton line?

A. By dividing the total amount by the dead weight.

Q. Starting with the chart will you indicate the spot on the East Coast tanker per ton line which shows the per ton cost of that ship?

A. That is that spot there (indicating).

Q. And that indicates a per ton cost of how much?

A. $200.

Q. $200. per ton?

A. In other words for the total cost of 10,000 tons it must be an intersection with the dead weight line.

Q. I think it is clear to the Master but just to make sure, your per ton lines, as I understand it, were plotted to correspond with the total cost as shown by the total cost lines; is that correct?

A. Or you might reverse it.

Q. Will you answer the question.

(Question repeated.)

A. Yes.

BY THE MASTER:

Q. Do you need a tonnage chart line to deter-

mine the cost per ton if you have the total cost of the boat and know its tonnage?

A. Not if you have the total cost but in developing a proposition of this nature you can probably have a better idea of the relation on size from your dead weight ton line than you can have from your total cost line, and that is the object of putting on your ton dead weight line.

BY MR. BROWN:

Q. With respect to the accounting methods in force at the time of these negotiations, as I understand it, for cost accounting purposes the divisions and sub-divisions into which shipbuilding costs were divided were called jobs, were they not?

A. Yes.

Q. And the job which was known as Job 12 represented substantially the complete steel hull of a ship, did it not?

A. Yes, substantially so.

Q. The plates and shapes were the principal items in Job 12, were they not?

A. Yes, sir.

Q. What did the balance of the items in Job 12 consist of?

A. Consisted of various matters.

Q. What were the principal items?

A. Well there were rivets, sternpost and stem.

Q. Castings?

A. Some castings.

Q. Forgings?

A. Well your sternpost is a forging. If you want the materials rather than the item itself I should say it consisted largely of castings and forgings, the major portion.

Q. And foundations?

A. The foundations would be made up of plates and shapes.

Q. In preparing this chart, as I understand it, your first object was to estimate the cost of duplicating a ship similar to Hull 253 which was a tanker of approximately 9100 dead weight tons, completed at Fore River about July, 1917; is that correct?

A. Yes, sir.

Q. And, as I understand it, you first ascertained from Bethlehem's Accounting Department that the cost of the material in Hull 253 had been approximately $389,000., of which approximately $150,000. represented Job 12 materials; is that correct?

A. That is correct.

Q. Then you ascertained, as I understand it, that the delivered price of plates in Job 12 with respect to Hull 253 had been $1.35 per hundred weight?

A. That is correct.

Q. That information was obtained from invoices relating to Job 12 materials, was it not?

A. That is my understanding.

Q. That was furnished you by the Accounting Department?

A. Yes.

Q. And that price was what is known as base, was it not?

A. No, sir; that was delivered price.

Q. That was a delivered price?

A. Yes.

Q. Do you remember what the base price of these materials was?

A. I think it was about $1.15. That is just my recollection.

Q. The current prices at the time you prepared this chart which had been agreed on by the Steel

Manufacturers in the War Industry Board, representing the United States, with respect to plates, was $3.25 base f. o. b. Pittsburgh, was it not?

A. That is right.

Q. And the current freight rate from Pittsburgh to Fore River at that time was 24 cents per hundred weight?

A. 24 cents per hundred weight.

Q. And, as I understand it, in preparing this chart you added 10 cents to the current freight rate which made a total delivered price of $3.59 as of the time you prepared the chart for plates; is that correct?

A. There was some reason for arriving at that ten cents.

Q. I am asking you if that is what you did?

A. Yes, that is correct.

Q. And then you figured that that price of $3.59 represented 2.66 percent. of the delivered price of Job 12 plates which had been included in Hull 253, did you not?

A. Yes.

Q. Using that percentage of 2.66, you then estimated that the material cost of Job 12 materials for a 9100 ton tanker similar to Hull 253 to be built during the period of construction that was contemplated was $150,000 times 2.66 or $399,000. Is that correct?

A. Yes.

Q. As I understand it, you then ascertained from Bethlehem's Accounting Department that the returned cost of material for Hull 253, other than such material as had been included in Job 12, was approximately $239,000.00; is that correct?

A. Yes.

Q. Would it help you to have your explanation before you?

A. Well, I can remember quite a lot of it. That is correct but I presume that you are giving me the figures I had before and it would only be a question of getting my data together.

Q. Now will you describe in a very general way the nature of the materials other than those contained in Job 12?

A. You have plates and shapes, rivets, steel castings, iron castings, steel forgings.

BY MR. EVANS:

Q. Is that Job 12 you are talking about?

A. No, this is other material. And you have considerable pipe, valves, fittings, all kinds of hardware, lumber, paints, rubber, canvas, rope, and then you have a lot of manufactured material which is classed as shipbuilding material, such as pumps, blowers, all kinds of gauges and fittings, and you have winches, windlasses, anchors and chains, small boats, davits, life saving equipment of all kinds, galley outfits, navigating outfits, hotel equipment.

BY MR. BROWN:

Q. Materials of that nature?

A. And materials of such nature.

BY MR. EVANS:

Q. Where do boilers and machinery come in?

A. The boilers and machinery at Fore River were purchased —

Q. Well, they are not included in job 12?

A. No, they go in other material.

BY MR. BROWN:

Q. As I understand it, in preparing this chart, you obtained from the Purchasing Department at Bethlehem information as to the current prices of

some of the major items of materials other than those contained in job 12, and compared such prices with the prices of corresponding items entering into Hull 253; is that correct?

A. Insofar as possible.

Q. And as a result of whatever comparison was made by you arrived at a factor of 1.75 percent. as the factor of increase to be used in determining the current price of materials for the purposes of this chart?

A. Yes, sir.

Q. Multiplying 239,000 by 1.75 gave you $418,000 as the estimated cost of materials other than Job 12 for an East Coast Tanker of 9100 dead weight tons, is that correct?

A. Yes, sir.

Q. That made a total estimated cost of material of $817,000; is that right?

A. That is right.

Q. As I understand it, you then ascertained that the average hourly earnings of direct labor on Hull 253 had been 38.75 cents per hour, is that correct?

A. That is right.

Q. How were those average hourly earnings determined?

A. They were determined, as I understand it—

Q. Well, did you determine them?

A. No.

Q. How would they be determined?

A. You will have to ask Mr. Geiss, who was in the Accounting Department, what method they used to determine that.

Q. What would be the general way? I want it for the information of the Master. Now, in the usual manner, are such average hourly earnings determined?

A. By the total number of hours worked by the people divided into the total amount paid them on direct labor. It probably may have included some others. I don't know just what the detail was that went into it.

Q. At any rate it was a figure supplied to you by the Accounting Department?

A. Yes.

Q. Then, as I understand it, you estimated that the average hourly earning rate of direct labor under the Boston Navy Yard wage scale at the time you prepared this chart would amount to 50 cents per hour; is that correct?

A. Approximately to 50 cents an hour.

Q. Well you used that 50 cents per hour in connection with your preparation of this chart, did you not?

A. Yes, sir.

Q. As representing the average hourly earning rate of direct labor under the Boston Navy Yard scale?

A. Yes, sir.

Q. And that rate represented an increase of 29 percent. over the earning rate of direct labor on Hull 253, did it not?

A. Yes, sir.

Q. Did you determine yourself the average hourly earning wage of direct labor at the Boston Navy Yard?

A. I think not.

Q. You think not?

A. No.

Q. Who did that for you?

A. I think I got that from the Accounting Department. I think that came from them. I haven't

any recollection of figuring it out myself at all. In fact I couldn't.

Q. Who was the head of the Accounting Department at that time?

A. You mean at the Fore River plant?

Q. At the time you prepared this chart?

A. I don't know who succeeded Mr. Schulze.

Q. It was whoever succeeded Mr. Schulze?

A. Well I wouldn't say I got it from there because I got all that information from Mr. Geiss.

Q. But the head of the Accounting Department at that time was the man who succeeded Mr. Schulze?

A. The head of the Fore River Accounting Department was the man who succeeded Mr. Schulze.

Q. Was it from the Fore River Accounting Department you obtained these figures?

A. They must have gotten them from Fore River.

Q. You must have?

A. No, not necessarily. I may have gotten them from one of the accountants at Bethlehem who got them from Fore River.

Q. In other words you probably asked some accountant up at Bethlehem to obtain them and that man would communicate with Fore River and obtain those figures which you desired?

A. That is very likely so.

Q. With respect to the labor item, as I understand it, you used an allowance of 30 percent. as an allowance for possible decrease in the efficiency of labor, did you not?

A. Yes.

Q. And that added to the allowance of 29 per cent. which we have been discussing made a factor of 1.68 for use in determining the cost of labor in

connection with an East Coast Tanker of 9100 tons, did it not?

A. Yes.

Q. You then ascertained from the Accounting Department, did you not, that the total direct labor cost on Hull 253 had been $326,000.?

A. Yes.

Q. And you then multiplied that figure by your factor of 1.68 and arrived at $548,000. as the estimated direct labor cost for an East Coast Tanker of 9100 dead weight tons, did you not?

A. Yes.

Q. As I understand it, in determining the allowance to be made for plant operating expense and administration and general expense, including depreciation, taxes and insurance, you first considered the past experience of Fore River which showed that the cost of such items had averaged approximately 65 percent. of the cost of direct labor, did you not?

A. No.

Q. You did not do that?

A. No.

Q. What did you do in determining the factor of 65 percent.?

A. Well that was more or less a factor of judgment which anybody with experience, their opinion would be as good as anybody's else, perhaps, but we did have figured out, with the plant at Fore River, while I was connected with it, that operating at a certain capacity that we would expect to have a 65 percent. overhead. That was under normal conditions.

BY MR. EVANS:

Q. You mean 65 percent. of the direct labor?

A. Of the direct labor. I thought that was understood as our overhead. Our overhead, including A. S. & G., had been considerably in excess of that, so it was fair to estimate that with the large increase in the amount of work that you were going to do, probably working two shifts, or something of that kind, that the overhead would not rise, but you could look for a substantial decrease and you could look for a decrease possibly over the overhead of a normal period. So it was finally settled upon as being 60 percent. to cover your total overhead.

Q. In overhead you include plant operating expense?

A. In the preparation of these figures, yes, sir.

BY MR. BROWN:

Q. When you refer to A. S. & G. I take it for granted you referred to Administration, Selling and General Expense?

A. Yes, sir.

Q. There would be no selling expense here?

A. There would be no selling. That would be one of the items that would be eliminated, but if you will permit me to say, the selling expense is a very minor item in shipbuilding.

Q. You contemplated a capacity production at your various yards under the Fleet program?

A. Yes, sir.

Q. And the items of Administration and General Expense, as I understand it, were more or less fixed items as compared with the other items of course entering into shipbuilding, were they not?

A. That you will have to ask the accountants. They got the information on that. I utilized what I got.

Q. As I understand it then you would not say

that the regular overhead charge at Fore River prior to September, 1917, had been 65 percent. of the cost of direct labor?

A. No, I wouldn't say that.

Q. You would not say it?

A. No.

Q. Applying your 60 percent, factor to the estimated direct labor cost of $548,000., gave a figure of $329,000. as the estimated cost of overhead, did it not?

A. Yes.

Q. That overhead included plant operating expense and administration and general expense, including depreciation, taxes, insurance and so forth?

A. That is what I understand; that is what was to be included.

Q. Adding that figure of $329,000. to your previous estimates for labor and material, gave a total of $1,694,000. as the estimated cost of material, labor, operating expense and overhead for an East Coast tanker at 9100 dead weight tons, did it not?

A. Yes.

Q. As I understand it, you then added 10 percent. to this total of $1,694,000. to cover equipment which you contemplated that Bethlehem would be required to furnish in connection with the Fleet ships and which the owners had furnished in connection with Hull 253, as well as special equipment required by the Government for war purposes and extraordinary contingencies, did you not?

A. Yes, sir.

Q. And this amount—allowance of 10 percent. produces an estimated cost for an East Coast tanker of 9100 dead weight tons of $1,863,000., does it not?

A. Yes.

Q. In a general way what was the equipment which had been supplied by the owners in connection with Hull 253? Would that be what is known as Hotel equipment?

A. Yes, sir.

Q. Relating principally to dining room equipment, did it not, and kitchen equipment?

A. Well it is bedding, crockery, silverware, cooking utensils.

Q. After finding that figure with respect to the tanker of 9100 dead weight tons, as I understand it, you then proceeded to determine the approximate probable cost of a tanker of 14,950 dead weight tons similar to Hulls 158 and 159 which had been completed at the Sparrows Point Plant in March and July 1917, respectively, did you not?

A. Yes, sir.

Q. And you first ascertained from the Accounting Department that the returned cost in connection with each of these ships was as follows: Job 12 materials $267,000.00; other materials $328,000; direct labor $451,000. Is that correct?

A. Yes, sir.

Q. Explain what is meant by the returned cost that we have been talking about?

A. The returned cost is the book cost of the ship.

Q. In other words, the actual cost?

A. Actual cost.

Q. Determined after completion of the ship?

A. Yes, sir.

Q. As I understand it, you then applied to such costs in connection with Hulls 158 and 159, the same equation factors which you had used in connection with the returned cost of Hull 253 and allowed the

same percentage of direct labor cost to cover plant operating expense, administration and general expense, including depreciation, taxes and insurance. Is that right?

A. Yes, sir.

Q. You likewise allowed the 10 percent. of the total estimated cost of material, labor and overhead, to cover war zone requirements and extraordinary contingencies?

A. Yes.

Q. As well as hotel equipment?

A. I did not investigate to find out whether the specifications required the contractors to furnish the hotel equipment or whether the owners furnished it on those ships.

Q. At any rate you made the same 10 percent. calculation?

A. Yes.

Q. As a matter of fact, on that hotel equipment, in connection with Hulls 158 and 159, isn't it a fact that the hotel equipment had been supplied by the Sparrows Point plant?

A. I don't know.

Q. Didn't you ever check that up?

A. No.

Q. The cost of a tanker of 14,950 dead weight tons, that is an East Coast tanker, determined by you in the manner that you have testified to, was $2,736,000. was it not?

A. If that is the sum total that you have got there, yes.

Q. Don't you know whether that was the cost?

A. No. The exact figures I could tell you was around $2,740,000., but I cannot tell you just the percentage.

Q. I show you a paper called "Description of Graph" offered in the previous proceeding as Exhibit G-154 and ask if that paper was not prepared either by you or on the basis of information supplied by your to Bethlehem counsel?

A. Well that was prepared on the basis of information supplied by me, yes sir.

Q. Referring to that I ask you whether the total cost of the 14,950 dead weight ton tanker, East Coast, as determined by you, was not $2,736,000.?

A. That is what it indicated in this computation there, yes, sir.

Q. And that computation was based on information furnished by you to Bethlehem counsel?

A. Yes.

Q. Then, as I understand it, having ascertained the estimated cost of the two tankers, to which you have referred, you then marked a spot on the chart to indicate the cost of the East Coast tanker of 9100 dead weight tons and another spot to represent the cost of the East Coast Tanker of 14,950 dead weight tons. Is that correct?

A. Yes, that is correct.

Q. And you then drew a line through those two spots, did you not? Would you like to see your explanation?

A. No, I don't want the explanation. I can tell you what it is. It went through those spots, that is the line carried down to zero.

Q. In other words you carried that line from those two spots down to zero?

A. Yes, that is my recollection.

Q. And that line which you drew through those two spots to zero was intended to represent the es-

timated cost of a tanker of any size to be built on the East Coast, was it not?

A. Yes.

Q. And that line is marked on the chart as "Tankers East", is it not?

A. Yes.

Q. The total cost line?

A. Yes, sir.

Q. Now, as I understand it, you then estimated that upon the basis of your experience the cost of tankers to be constructed in the West Coast yards would be approximately 5 per cent. higher than in the East Coast yard and upon that that estimation you drew the line on the chart representing the total cost of any tanker to be built on the West Coast. Is that correct?

A. Yes, sir.

Q. And that is the line which is marked "West Coast plus 5 per cent."?

A. Yes.

Q. Which is marked "Tankers West, East plus 5 percent."; is that correct?

A. Yes, sir.

Q. Will you explain why you took this 5 percent. to represent the difference between the cost of the East and West Coast tankers?

A. Yes. The freight rate on the West Coast was 50 cents per cwt. higher, than it was on the east coast. We took on a 10,000 ton boat, that would be approximately 4,000 tons of material to be shipped, and we took it flat at 4,000 tons. Then on the approximate amount of labor which was involved we increased the labor 10 percent. on the basis that the labor rates on the west coast were that much higher than they

were on the East Coast, and the labor was taken at $600,000, so that gives you $100,000. increase on the West Coast which was 5 percent. on your $2,000,000. Now there wasn't any increase in the overhead on the West Coast because the overhead operated on quite a different basis than what they did on the East Coast, so that the overhead was taken practically on the same basis it would take to operate on the East Coast and on the West Coast, but the percentage on the direct labor would be different.

Q. And, as I understand it, you worked that up from figures which were submitted to you by the Accounting Department at that time?

A. On the freight?

Q. The figures which you have been talking about to show the difference between the East and West Coast costs, was that based merely on your experience or on figures you obtained?

A. No, we got the rates from the Traffic Department, the freight rates. Now I might explain that that would not be sufficient to cover because that was only on your heavy materials and you take in the shipment of machinery you have a much larger difference, but it was merely taken as a flat to get a reasonable differential between construction on the East Coast and on the West Coast.

Q. In other words, it was a matter you worked up with the Traffic Department at the time in question?

A. I got the information of the difference in freight charges from the Traffic Department and on the wage business that came from the Accounting Department.

Q. And you, as I understand it, to proceed with the construction of the chart, in order to arrive at

the cost of a cargo ship you estimated upon the basis of your experience that a tanker of 10,000 dead weight tons would cost about 15 percent more than a cargo ship of that tonnage and that a tanker of 15,000 dead weight tons would cost about 10 per cent more than a cargo ship of that tonnage. Is that correct?

A. Yes.

Q. Then, as I understand it, the points representing these differentials in cost were spotted on the chart from the line representing the total cost of East Coast tanker and through those two spots, the line marked "Cargo East", was constructed; is that correct?

A. That is right.

Q. Then from that line, as I understand it, by an allowance of 5 percent. for increased cost on the West Coast, the line marked "Cargo West equals East plus 5 per cent," was constructed; is that right?

A. That is right.

Q. Of course the 5 per cent. being based on what you have already explained?

A. Yes, sir.

MR. BROWN: I would like to offer in evidence a letter which was offered as Exhibit G-37 before Judge Roberts, being a letter dated October 26, 1928, addressed to Ralph B. Evans, Esq., by Joseph J. Brown.

THE MASTER: It is admitted without objection.

MR. BROWN: The letter reads:

"In connection with Mr. Harry Brown's description of his method of arriving at the

costs delineated on his graph, information is requested as to whether or not Mr. Brown used the cost data of any hulls other than 253-4 and 158-9. If Mr. Brown did use the cost data of other hulls, information is requested as to which hulls were so used and what the data was in connection with those hulls. Information is also desired as to whether Mr. Brown applied the same factors to the data on these other hulls as he applied to Hull 253 or whether he used other factors and, if so, his method of arriving at those factors.

Information is also desired as to the data or method which Mr. Brown used in arriving at his thirty per cent. addition for the inefficiency of labor contained in the factor 1.68, applying to labor costs.

Have you received any report from Mr. Robinson as to the number of pounds of steel represented by the invoices for Hulls 253-4, which you returned to him for that purpose?"

I would also like to offer in evidence letter dated October 27th, 1928, addressed by Ralph B. Evans to Joseph J. Brown, which has been offered in the previous proceeding as Exhibit G-38.

THE MASTER: It is admitted without objection.

MR. BROWN: The letter reading:

"Answering your letter of October 26th:

(1) As explained in Mr. Brown's memorandum the only hulls which he considered in arriving at his estimate were 253-254, 158-159.

(2) We are unable to supply you with any data in support of Brown's estimate of 30% for inefficiency of labor. This was merely an estimate based upon his own opinion and the opinion of others whom he consulted.

(3) I have not yet heard from Mr. Robinson as to the discrepancy between the amount of steel shown in the invoices and the amount of steel actually furnished."

Q. It took you a considerable time, did it not, to get together the cost data which was used in connection with the preparation of the chart?

A. It would take some time. How much I really don't know.

Q. Aside from the information which you said you obtained from the Accounting and Purchasing Departments, did you receive any assistance of anyone in connection with the preparation of the chart?

A. No.

Q. You did not ask Mr. Schulze to assist in the preparation of the chart in any way?

A. No.

Q. Did you advise him that the chart was being prepared?

A. No.

Q. You never discussed the chart with him either before or after its preparation, as I understand it?

A. No.

Q. As a matter of fact, Schulze never knew of the existence of the chart until long after the negotiations with the Fleet Corporation, did he?

A. That is right.

Q. As a matter of fact, Mr. Schulze could readily have obtained from your Accounting and Purchasing Departments all of the data which you acquired

and used in connection with the preparation of this chart?

A. He could.

Q. And he would have been fully competent to determine the cost for Job 12 materials similar to Hull 253?

A. Only in part.

Q. There was something about your method that he would not have been familiar with, or, in other words, my question is couldn't Mr. Schulze have made the same computation which you did with respect to Job 12 for materials for a ship similar to Hull 253?

A. Yes, he could.

Q. Did Mr. Schulze assist you in connection with your explanation of the chart after your re-employment by Bethlehem?

A. No, sir.

Q. Now, as I understand it, from 1914 until Mr. Powell left Bethlehem's employment, he and you were together in very close business association with respect to all matters affecting costs, were you not?

A. Yes, sir.

Q. Mr. Powell, as I understand it, had the final decision with respect to matters of estimating, did he not? In other words, he was the active head of the shipbuilding, was he not?

A. He was the active head of the shipbuilding.

Q. You would regard him as your superior with respect to all matters?

A. Yes.

Q. When did you first take up the question of this chart with Mr. Powell?

A. Well that I cannot say definitely but it seems to me that the first time that I took it up with him

was after we came back from Washington and submitted the original proposals.

Q. And you had never discussed the chart with him prior to the time you returned from Washington after submitting the original proposals?

A. To the best of my recollection, no.

Q. You were in practically daily contact with Mr. Powell during that period, were you not?

A. No.

Q. You were not?

A. No.

Q. As a matter of fact you saw very little of him, I suppose?

A. At that time we met by appointment.

Q. You met by appointment

A. Yes.

Q. You saw very little of him during that time?

A. Well, it may have been little or may have been much, I can't recall.

Q. At any rate you were not in very close contact with respect to questions of estimating, were you? You were not in very close contact with Mr. Powell with respect to questions of estimates and estimating?

A. No.

Q. In other words, was estimating a matter of frequent conference between you and Mr. Powell or, to put it another way, instead of saying estimating, was the subject of cost the matter of repeated discussions between you and Powell at the time in question?

A. No.

Q. Did you have any costs discussions with him preceding the submission of your first proposal to the Fleet Corporation and following his original instructions to you?

A. I cannot recall whether there were or whether there were not.

Q. To the best of your recollection the first time that you mentioned this chart to Mr. Powell, as I understand it, was when you returned from Washington after your conference of December, was it?

MR. EVANS: That is not what he said. I do not want you to put words in his mouth.

MR. BROWN: I have no thought of that. If Mr. Brown did not say that let us get what he did say.

BY MR. BROWN:

Q. When did you first discuss this chart with Mr. Powell?

A. I think the first time that Mr. Powell knew about the chart was when he called for me to come to Washington with him, or to meet him.

Q. And when was that?

A. That was the date, I suppose the 18th of December.

BY MR. EVANS:

Q. The 18th of December, 1917?

A. 1917.

BY MR. BROWN:

Q. Was Mr. Powell located at Bethlehem, Pa., during the period of the construction of this chart and up to December 18, 1917?

A. His headquarters were at Bethlehem.

Q. But he traveled a great deal?

A. Yes.

Q. And wherever possible you traveled with him, did you not?

A. No.

Q. Were you here when Mr. Powell testified before Mr. Roberts in the last proceeding?

A. Yes.

Q. Did you hear him testify to that effect, that wherever possible you two traveled together during that period?

A. Wherever possible? That depends on what you mean. It was possible for me to travel with him continuously.

Q. However you and Mr. Powell were very closely associated during this period?

A. We were.

Q. When you and he had been at Fore River you were in the closest possible business association on matters that affected cost, were you not?

A. That is right.

Q. And then the Estimating Department was abolished sometime previous to the organization of the Shipbuilding Corporation, was it not?

A. Yes.

Q. And then you and he did all the estimating, did you not?

A. There was practically no estimating done during that time.

Q. Whatever estimating was done, you and he did it, did you not? You and he took the place of the Estimating Department, didn't you?

A. There was no estimating department. I don't just know how to answer you.

Q. Mr. Powell testified—I would just like to refresh your memory—at page 543 in the proceeding before Mr. Roberts, that in 1916 we decided to abolish the estimating department because we thought that he (meaning you) and I could guess better than

the estimating department could estimate it. Is that correct?

A. I daresay that is a correct statement.

Q. Then he testified: "Mr. Brown and I were together on the average of several hours a day. The costs were one of the most vital things we were facing and they were the subjects of discussions that were lengthy and frequent and covered all of the different answers that were continuously cropping up and we compared our figures and so forth." That is correct, is it not?

A. Yes.

Q. And that was the situation which prevailed at the time you prepared this chart, was it not?

A. I think Mr. Powell's statement is entirely too general there when he says we were together several hours a day, because there were days I did not see Mr. Powell, but when we were together the subject came up and would be thoroughly discussed between Mr. Powell and myself, and at that period the question of what things were going to cost was something that was up in the air.

Q. Costs were one of the most vital things in which your company was interested at that time, were they not?

A. I don't know how to express it as being vital. I should say it was an important factor.

Q. And they were a matter which was discussed between you and Mr. Powell very frequently during this period, were they not?

A. Now which period?

Q. During the period of the construction of this chart and up to December 18, 1917?

A. Well, I should say not.

Q. You would say not?

A. Yes.

Q. Do you think they were discussed at all between you and Mr. Powell during that period?

A. The only discussion that I recollect having with Mr. Powell about the preparation of this chart, or the preparation of the figures, I wouldn't say that the chart was mentioned but I believe he knew how I was to go about it, was a question of labor efficiency and I not only talked with Mr. Powell about it but with Mr. Smith about it and I talked to the managers of each of the plants about it.

Q. That was during the preparation of the chart?

A. Yes, all during the preparation of the figures from which the chart was made.

Q. Did you tell Mr. Powell that you intended to make or that you had made a chart similar to this prior to December 18th, 1917?

A. No. I didn't think that was necessary.

Q. Never said anything about it?

A. No.

Q. In other words, as I understand it, the estimating was your job and that you did not consider that Mr. Powell would be interested until you had completed your estimates and he called for them: is that correct?

A. I should say that that probably would be substantially correct, because that was the custom we had always followed. I never bothered Mr. Powell until figures had been completed and then talked them over with him.

Q. He knew you were entirely competent to perform the duties which were assigned to you which included estimating and that your natural course of procedure would be to perform that duty and then submit to him what you had done when he asked for it; is that correct?

A. I should say if you change that knew to thought it might be correct.

(Recess from 1 o'clock P. M. to 2 o'clock P. M.)

2 p. m.

HARRY BROWN, examination resumed.

BY MR. BROWN:

Q. I wanted to ask you again how you got your estimate of fifty cents as representing the average hourly earning rate under the Navy Yard scale which you used in connection with your chart?

A. We were ordered, Bethlehem was ordered, to put in the Navy Yard rates at its plants; some time in October, I believe it was, of 1917.

BY MR. EVANS:

Q. You mean ordered by the Fleet Corporation?

A. I do not know whether it was ordered or whether it was approved that they be put in by both the Fleet Corporation and the Navy Department, and that would form substantially the basis of allowances for increased wages to be allowed on contracts.

BY MR. BROWN:

Q. How did you arrive at that, is what my question is directed to?

A. Yes, but I thought to make the picture complete you had better understand how the thing came. Now just what the Accounting Department did in arriving at their approximate fifty cents I do not know, but the natural assumption would be that they would take the different departments and the

rates in the department and adjust them to correspond to the Navy Yard rate, which was a higher rate than was at the shipyard.

Q. It was something that you directed somebody in the Accounting Department to do for you?

A. Not directed, the Accounting Department gave me the probable figure. Now at the time at which I was working on this subject, the rates had not all been put into effect, and there was no question but what a considerable judgment would have to be exercised by somebody as to what the final rate would be. Whether that was by me, after getting from the Accounting Department what the proper rate to use would be, or by somebody else, has just gone from my mind altogether; but that is the manner in which the proposition was handled.

Q. You do not recall from whom in the Accounting Department you got the information with respect to this 50-cent rate?

A. No, I do not. It was either Mr. Geiss or one of the others who were stationed at Bethlehem, but who were in constant touch with the various yards in connection with their accounting systems.

Q. Let me ask you again, because I do not think that your previous answers are entirely clear, as to when you first advised Mr. Powell as to the existence of this chart which you prepared.

A. To the best of my recollection, he was advised of the existence of this chart on the 18th of December, 1917.

Q. And that was at your conference in Washington on that date?

A. Yes, when I prepared the other chart in Washington.

Q. When you prepared the chart, which we will refer to as the second chart, in Washington?

A. Yes, sir.

Q. And as you recall at the present time that was the first time that you had advised Mr. Powell as to the existence of this first chart which has been offered in evidence; is that correct?

A. To the best of my recollection, that is correct.

Q. Did you then tell him the basis upon which that first chart had been prepared?

A. Yes, sir.

Q. Did you explain it to him in detail?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. You showed him or explained to him exactly how you had prepared the chart which has been offered in evidence?

A. I explained to him how the figures were arrived at.

Q. How the figures were arrived at?

A. Yes, sir.

Q. There was a conference in Washington on December 12, 1917, between you and Mr. Powell, representing the Bethlehem Company, and certain representatives of the Fleet Corporation, who, I think, were Admiral Bowles and Mr. Radford, was there not? That is referred to in your proposal of December 13th. Do you recall that conference?

A. No, not especially by that date.

Q. Let me refresh your recollection by showing you this letter of December 13th, which appears at page 201 of the Concession of Documentary Evidence, and which states in the first paragraph "Re-

ferring to conference on December 12, 1917, between representatives of the Emergency Fleet Corporation and of this Corporation," namely, Bethlehem. That is the conference to which I am referring. You remember that letter, do you not?

A. I remember the letter, yes, sir.

Q. As a matter of fact, you attended the conferences with Mr. Powell relating to the negotiations with respect to the contracts in controversy, did you not? You attended the Washington conferences relating to the contracts in controversy, did you not?

A. The present contracts, yes.

Q. And one of those conferences took place on December 12, 1917?

A. Yes.

Q. As a matter of fact, the proposal of December 13th, which I have shown you and which was offered in evidence as Exhibit G-104 in the previous proceeding, was prepared by you and Mr. Powell in Washington on the evening of December 12th, was it not?

A. Yes.

MR. BROWN: I will offer in evidence the letter which was previously offered as Exhibit G-104 and which appears at page 201 of the Confession of Documentary Evidence.

THE MASTER: If there is no objection, it will be admitted.

BY MR. BROWN:

Q. It was contemplated, at the time of that December 12th conference which is referred to in Exhibit G-104, that the ships which Bethlehem would

be called upon to build for the Fleet would be certain of the types and tonnages designated in that letter of December 13th, was it not?

A. Yes, sir.

Q. And at that time, as I understand it, namely, December 12th, you were fully prepared to submit estimates for all tank and cargo ships referred to in the proposal of December 13th, were you not?

A. I should think so.

Q. You should think so?

A. Yes.

Q. You prepared your chart, did you not, Mr. Brown?

A. Yes.

Q. And that was all that you considered necessary to enable you to present estimates upon any tank or cargo ship which the Fleet Corporation might have required, was it not?

A. That is right.

Q. The chart was so regarded by you; is that correct?

A. Was regarded so by me.

Q. Mr. Powell understood at the time of the December 12th conference, did he not, that you were prepared to submit estimates on any of the tank and cargo ships which were referred to in the proposal of December 13th?

A. I daresay that he understood.

Q. You daresay that he understood?

A. Yes.

Q. You do not mean to say that you had a conference down there in Washington with Mr. Powell and representatives of the Fleet and afterwards, in conference with Mr. Powell, prepared this letter of December 13, 1917, and did not advise him that you

were in a position to submit estimates with respect to any of the tank and cargo ships there referred to?

A. That does not seem reasonable.

Q. It does not seem reasonable?

A. No, it does not.

Q. So Mr. Powell must have been advised by that time, you think, as to your chart and its basis; is that correct?

A. That is probably so.

Q. So that it was probably at the time of the December 12th conference that you advised Mr. Powell with respect to your chart, instead of the conference of December 18th; is that correct?

A. That would appear to be correct.

Q. And when you advised him as to your chart at that time you probably explained the basis of its preparation, did you not?

A. Very likely so. That would be natural.

Q. So, in all probability, Mr. Powell fully understood not only the nature of the chart but the basis of its preparation as early as December 12, 1917, did he not?

A. Probably did, yes, sir.

Q. So Powell as early as December 12th understood that you were fully prepared to submit estimates on any of the tank and cargo ships that were required by Bethlehem, did he not? That is a simple question, is it not?

A. Oh, yes, that is perfectly simple, Mr. Brown. I am trying to project myself back into that period. It is quite a period.

(Question read.)

A. Mr. Powell understood that I had made some preparation for it, yes.

Q. Well, now, Mr. Brown, let us see if we have understood it. I thought at the time of the December 12th conference Mr. Powell fully understood all about your chart and the basis of its preparation. Now do you wish to explain what you have said on that subject?

A. Mr. Powell was acquainted with it at that time, Sir, yes.

Q. There is no doubt about it that he knew all about your chart at that time and the basis of its preparation?

A. I do not know whether he knew all about it or not, but he knew about it.

Q. Mr. Brown, I thought you had said that you had fully explained the chart and its basis to him at the time of the December 12th conference, and that it would be very unreasonable to think that you had not?

A. Possibly so. I explained to him the basis on which the chart was prepared, but I do not know that I explained to him just how the chart was prepared.

Q. You think all you told him was that there was a chart, but you did not say any more about it at that time; is that correct?

A. Very likely so, because he was familiar with the type of this character of plotting.

Q. And you knew at the time of the December 12th conference that you would be shortly called on to present estimates of cost, did you not?

A. Yes.

Q. And you had asked the Fleet Corporation to give the matter as speedy attention as possible, had you not?

A. The Company did, yes; Mr. Powell, yes.

Q. So that at the time of your December 12th conference both you and Mr. Powell knew that within a very few days, or a very little longer than that, you would be called on to submit estimate of cost, did you not?

A. We did not know how long it would be.

Q. You thought it would be in the immediate future, did you not?

A. We often thought there would be things done in the immediate future down there and sometimes it took two, three, four or five months.

MR. BROWN: I just would like to note in the last paragraph of the letter of December 13th which has been offered in evidence, appearing at page 212, the statement "It is requested that the proposals in this letter be considered immediately and that representatives of this company be called in conference with a view to settling the Emergency Fleet Corporation's requirement for vessels from its yards at the earliest practicable date." And on page 211: "Until the Emergency Fleet Corporation has settled on the types and sizes of vessels that it may desire to order from us for construction at the above plants, no definite proposals as to fees per ton and estimated costs are submitted."

BY MR. BROWN:

Q. So you and Mr. Powell understood at that time, did you not, that you would be called upon by the Fleet to furnish such estimates at a very early date?

A. We expected to be called upon to furnish estimates to the Fleet Corporation.

Q. At an early date, did you not?

A. I will accept that, at an early date.

Q. The sooner the better?

A. I would not say that.

Q. You would not say that?

A. No.

Q. It was a matter of indifference to you; is that correct?

A. No, it was not a matter of indifference to us. It was a matter of the celerity with which the Fleet Corporation would act.

Q. And you were urging it to give the matter very prompt attention, were you not?

A. Yes.

Q. And notwithstanding that, as I understand it, you now state that at the time of the December 12th conference there was no discussion between you and Mr. Powell as to the estimates which you had prepared and that you merely mentioned to him that there was such a thing as a chart; is that correct?

A. I do not recall.

Q. You do not recall what you said?

A. No, not absolutely.

Q. I will ask you again, is it not probable, under the circumstances which existed at that time, that you and Powell would have discussed costs at that time, if you had not discussed them previously; that Mr. Powell would have asked you what you had done in the way of preparing estimates of cost; and that you would have fully explained the chart to Mr. Powell and the basis of its preparation? Is not that what would have happened in all likelihood at that time?

A. That is probable, that such a thing did happen.

Q. So that it is probable that as early as December 12th Powell understood that you had prepared a chart, and also understood the basis upon which the chart had been prepared; is that correct?

A. I should say that could be probable.

Q. That would be probable?

A. Yes, might be probable.

Q. Then after submitting the December 13th proposal, as I understand it, you and Mr. Powell waited for the Fleet Corporation to inform you as to the types and sizes of ships that were required; is that correct?

A. Probably so.

Q. And the next you heard of the proposition was just preceding the conference of December 18th; is that correct?

A. Understand, Mr. Brown, that Mr. Powell handled most of these things independent of me.

Q. Very well, but the next you were called into the transaction was just prior to the conference of December 18th, was it not?

A. Yes.

Q. And there had been no discussion between you and Mr. Powell as to estimates during that interval, as I understand it, between December 12th and December 18th?

A. I do not know whether there were or not.

Q. You do not think it was likely that there would have been such a discussion if he had not understood what you had done with respect to the estimates which he had instructed you to prepare?

A. Probably he would not have mentioned any more.

Q. The next you knew about the transaction was that you and Powell were called into conference with representatives of the Fleet Corporation in Washington on December 18th; is that correct?

A. According to the best of my recollection, yes.

Q. And that is the conference which is referred to in the letter of December 19, 1917, addressed by Mr. Powell to the Fleet Corporation, offered in evidence previously as Exhibit G-109, which appears at page 224 of the Documentary Evidence, is it? I refer to the first paragraph.

A. Yes, sir.

MR. BROWN: This is probably an appropriate place to offer that letter in evidence as Exhibit G-109. It appears at page 224 of the Concession of Documentary Evidence.

THE MASTER: It is admitted.

BY MR. BROWN:

Q. The understood purpose of that conference on December 18th with the Fleet representatives was to discuss types and sizes of ships, form of contract and estimates of costs, was it not?

A. May I see the letter?

Q. The letter of December 19th, yes.

A. Is that the one? That is the one submitting proposals, is it?

Q. That is the letter submitting proposals.

A. Now what was the question?

(Question read, as follows: "The understood purpose of that conference on December 18th with the Fleet representatives was to discuss types and sizes of ships, form of contract and estimates of costs, was it not?")

BY MR. BROWN:

Q. If I can help you on that, you know the December 13th letter was written and the parts I have quoted from that letter show that you asked the Fleet Corporation to let you know as soon as possible types and sizes so that you could submit estimates?

A. Submit a firm proposition.

Q. Now I am asking whether it was not the understood purpose of that conference of December 18th, that that was the conference at which these ships were to be discussed and estimates considered?

MR. EVANS: At the conference of December 18th?

A. Yes.

MR. EVANS: You mean the conference before that letter was written? Is that the conference you are referring to?

BY MR. BROWN:

Q. That conference was for the purpose of discussing types and sizes of ships and estimates, was it not?

MR. EVANS: You are referring to a conference that took place on December 18th, prior to the writing and receipt of the letter of December 19th?

MR. BROWN: That is right.

BY MR. BROWN:

Q. Let us pass that question. We seem to be having a good deal of difficulty about it. You were at Sparrows Point, were you not, when Mr. Powell

telephoned to you and requested you to meet him in Washington on December 18th?

A. Yes, sir.

Q. And you were at Sparrows Point in connection with some Bethlehem bids, were you not?

A. No, sir. Did you say bids or business?

Q. Well, possibly it was a misprint in the previous testimony I am not sure.

MR. EVANS: I cannot imagine what bids there would be.

A. It could not possibly have been bids. I was there on Bethlehem business.

MR. BROWN: To explain why I asked the question, it appears at page 441 of the previous testimony that he was at Sparrows Point in connection with some Bethlehem bids. I did not understand it and I was going to ask what it was about. That is probably a typographical error?

THE WITNESS: Yes, sir.

BY MR. BROWN:

Q. As I understand it, you went to Washington and met Powell at the Hotel Willard, did you not?

A. Yes, sir.

Q. Mr. Powell had just arrived in Washington from New York, had he not?

A. I do not know.

Q. He telephoned you from New York, did he not?

A. My recollection is that he telephoned me from Washington.

Q. Telephoned you from Washington?

A. That is the best of my recollection.

Q. As I understand it, when he telephoned you at Sparrows Point he told you that the Emergency Fleet Corporation were insisting upon the Bethlehem Company submitting proposals for the construction of ships, definite proposals, did he not?

A. Yes, sir.

Q. And you told him in that telephone conversation, as I understand it, that you were totally unprepared to give him prices and so forth, did you not?

A. Or words to that effect.

Q. Mr. Powell then told you that the Fleet Corporation did not want excuses, they wanted action; is that correct?

A. Yes.

Q. So you then went to Baltimore by the next train and got over to Washington?

A. I probably went to Baltimore by automobile from Sparrows Point; whichever way it was I went.

Q. So you knew, at the time of that telephone conversation, that the proposed Washington conference was for the purpose of determining upon estimates for submission to the Fleet, did you not?

A. Yes, sir.

Q. And that what Powell wanted particularly was the estimates which you had been instructed to prepare, did you not?

A. Yes, sir.

Q. And the chart had been prepared for just such an occasion as that, had it not?

A. Yes, sir.

Q. And was intended to represent estimates of cost for any size tank or cargo ship which you would be called on to build for the Fleet, was it not?

A. Yes, sir.

Q. Did Powell say anything about the chart in his telephone conversation with you?

A. No, sir.

Q. Not a word?

A. Not to the best of my recollection.

Q. Did you?

A. No, sir.

Q. When you arrived at Washington from Sparrows Point, as I understand it, Powell requested you to furnish him with cost estimates as they had been worked up by you in accordance with his instructions; is that correct?

A. I would not say it was just that way.

Q. Possibly I can refresh your recollection about that. It appears at page 442 of your testimony in the previous proceeding that you testified as follows: "Mr. Powell advised me that he wanted these costs as they had been worked up. Not having the figures or the graph with me, I had to recall it." Is that correct?

A. Yes, that is substantially correct.

Q. The chart at that time was in the Bethlehem office at Bethlehem, Pennsylvania, was it not?

A. Yes, sir.

Q. The conference with the Fleet officials on December 18th lasted several hours, did it not?

A. I do not recall how long it lasted.

Q. It lasted a considerable time, did it not? Do you remember Mr. Powell testifying that it lasted for several hours in the afternoon, at the previous hearing?

A. That is what Mr. Powell testified to, but I—

Q. You have a different recollection about it?

A. Not different. It is very hazy just how long it did last.

Q. Then on the evening following the conference, as I understand it, you and Powell discussed the provisions which were subsequently included in this proposal of December 19th, reference to as Exhibit G-109, did you not?

A. Yes, sir.

Q. Mr. Powell then left for the Harlan plant, did he not? Do you remember that?

A. I think it was the next morning he left, if my recollection is clear on it. He left and went to the Harlan plant.

Q. To refresh your recollection, Mr. Powell testified that he left Washington and went to the Harlan plant, where he dictated the letter on the following day, which would be December 19th, and that the letter was then handed by him to Messrs. Radford and Piez in Washington on December 20th. Does that coincide with your recollection about it?

A. I should say that was correct.

Q. As far as you know?

A. As far as I know, yes.

Q. Did you send for the chart when you were requested by Mr. Powell to come to Washington?

A. No, sir.

Q. Did you request anyone in Bethlehem, either by telephone or otherwise, to examine the chart and advise you as to the chart prices of the particular tank and cargo ships with respect to which you were submitting estimates?

A. No, sir.

Q. It would have been a very simple matter to do that, would it not?

A. I do not know.

Q. Let me refresh your recollection by your testimony before Mr. Roberts at page 515, where

you testified as follows: "Q. Can you think of any reason why you did not telephone to someone either at Bethlehem or Fore River, wherever your chart was kept, asking them to take the chart and either send it to you in Washington or let you know what prices represented the different types of ships? A. I do not think I could have gotten it in Washington at the time. It was sometime about noon, as I recall, when Mr. Powell called for me. Q. How long would it have taken Mr. Schulze to go wherever you wanted him to go and read off the prices that represented the different ships? A. It would not have taken very long. Q. That is exactly the information you needed to arrive at in the reconstruction you made at Washington? A. That would be probably so." Do you remember so testifying?

A. Yes.

Q. That is correct, is it not? Is not that testimony correct?

A. Yes, the testimony is correct, but is your question the same now as it was then?

Q. I am asking you whether your testimony correctly states the facts. I will first ask whether you so testified before Mr. Roberts?

A. I so testified, if it is there.

Q. When Mr. Powell asked you for the costs as they had been worked up by you, what did you tell him?

A. I told him I did not have them with me.

Q. You did not have them with you?

A. Yes.

Q. Did Mr. Powell suggest getting the chart or having the figures read from the chart by telephone?

A. No, sir.

Q. Did he make any reference to the chart?

A. I think not.

Q. You do not think there was any mention of this original chart at the time of your conference with Powell in Washington?

A. I may have gotten these two conferences confused, whether it was the one of the 12th or the one of the 18th. I know at one of them Mr. Powell was informed in reference to it. I first thought it was at this one, but it could just as well have been at another one.

BY MR. EVANS:

Q. You mean you first thought it was at the conference of December 18th?

A. Yes, sir, when I first mentioned it to him.

Q. But it is just as probable it might have been the conference of the 12th?

A. Of the 12th, December 12th. It is very difficult to carry those dates over a period of years.

BY MR. BROWN:

Q. Right on that point, you have been re-employed by Bethlehem from October, 1924, to the present time, have you not?

A. Yes, sir.

Q. For the sole purpose of preparing yourself in connection with the trial of this case; is that correct?

A. Yes.

Q. And you have reviewed all the data that relate to this case and which has been offered in evidence in the previous proceeding, with great care, have you not?

A. Before Mr. Roberts, you mean?

Q. What I am saying is that I do not want the Master to receive the impression that you are a witness on this chair who has been called after the

lapse of years without having had any previous opportunity to prepare himself for this hearing. You do not wish to give that impression, do you?

A. No, I do not.

Q. You have been employed since October or November of 1924 for the sole purpose of preparing yourself for just what you are undergoing at the present time, have you not?

A. That is so.

Q. That is correct?

A. Yes.

Q. And with the thought that this chart and its explanation is a matter of prime importance in this case; that is true, is it not?

A. No.

Q. You have not had that thought in mind?

A. No.

Q. You did not think the chart was important?

A. No.

Q. You have never thought the chart was important?

A. I did not think anybody thought it was as important as you think it is.

Q. It appears at page 248 of the testimony before Mr. Roberts which you gave at the last hearing, that you testified, in answer to the following question, as follows: "Q. You understood from the time you first knew of this case that it might become very important and that you have an explanation for the chart, did you not? A. Why, yes." You so testified, did you not?

A. Yes.

Q. So you and I both thought it was rather important, Mr. Brown?

A. Yes, but I did not think probably it was as important as you do.

Q. Yes; I understand your reasons for not thinking so. At any rate, when Powell asked you on December 18th for your estimates as they had been worked up in accordance with his instructions, you proceeded to prepare a second chart, did you not?

A. Yes.

Q. And that was at the Hotel Willard, was it not, in Washington?

A. Yes.

Q. On what sort of paper was that second chart prepared?

A. On a ruled pad.

Q. A ruled pad such as this that I have here?

A. Similar to that, yes.

Q. Indicating a foolscap scratch pad?

A. Sir?

Q. That would be considered as a foolscap scratch pad, would it not?

A. I do not know whether you would call it that or not.

Q. Never mind what we would call it. Will you show the Master just how you reconstructed that second chart in Washington?

A. (Demonstrating to the Master as requested) I do not know whether it is necessary to go through all this or not. Those lines were ruled through, forming squares.

Q. May I interrupt your labors at this point and ask, have you now prepared the background of the chart similar to that used by you in Washington?

A. Substantially so.

MR. BROWN: May I have that marked for identification just as it is, so that we may refer

to it as we go along? This might be called Government Exhibit 204 for Identification.

(The paper was so marked.)

BY MR. BROWN:

Q. Having prepared a rough chart, substantially similar to the form which has been marked as Exhibit G-204 for Identification, what did you next proceed to do?

A. I next proceeded to put a spot on the 10,000 ton mark for an East Coast tanker.

Q. Representing your estimate of cost for a tanker of 10,000 dead weight tons?

A. Yes, sir.

Q. An East Coast tanker?

A. Yes, sir.

Q. Did that represent the cost per ton?

A. No, sir—well, dividing it by the tonnage, it would.

Q. What was the spot intended to represent? The total cost?

A. The total cost.

Q. What did you next proceed to do?

A. Next proceeded to run in a line. First I think that I did this.

Q. Namely, draw a line along a straight edge?

A. A diagonal.

Q. Draw a line along a straight edge from zero to the point that you have indicated?

A. Yes. The next thing I recall doing is, knowing that vessels under 10,000 tons would cost more than those above 10,000 tons—

BY MR. EVANS:

Q. You mean cost more per ton?

A. Cost more per ton, that is, the relative cost per size, you have to get a line off somewhere like

this (indicating). You will find that this, within a range, will run pretty close to a straight line, for the purposes of illustration.

BY MR. BROWN:

Q. May I interrupt you, so that we will get this straight on the record? The line which you have drawn is a line which I ask to have marked for identification as "A". Now will you proceed?

A. After having established that line, it simply became a question—

Q. Which line is that; A?

A. This line A. Understand, I am not saying that this is the absolute line.

Q. I understand.

A. Now then, if we wanted to take off a 7500-ton boat we took the mean in between there, which is 7500 tons, and read this off down to the base line, which is cost in dollars, and it would read around $1,525,000 on this line. (Referring to base line.)

Q. So that we will not get too far afield, what I am trying to get you to do is to tell us what you did in connection with the reconstruction of this chart in Washington?

A. That is as far as I did.

Q. So, as I understand it, you prepared a second chart in Washington on the basis of a spot which you selected as representing the total cost of an East Coast tanker of 10,100 tons; is that correct?

A. 10,000 tons.

Q. And then, on the basis of your experience, you drew a line both above and below that point, which was intended to represent the cost of any East Coast tanker of any tonnage which might be required by the Fleet Corporation; is that correct?

A. Yes, sir.

MR. BROWN: I would like to have that offered in evidence.

THE MASTER: Is there any objection to the physical demonstration? It is admitted as Exhibit G-204.

BY MR. BROWN:

Q. That line representing the total cost of East Coast tankers was the only line that you constructed in connection with this second chart, was it not?

A. Yes, sir.

Q. Your estimates upon West Coast tankers and East and West Coast cargo ships were based on percentage differentials, were they not?

A. Yes, sir.

Q. Will you illustrate just how your estimate for an East Coast cargo ship of 7400 dead weight tons was determined from that chart?

A. That was taken on the line corresponding to the 7400 tons. Incidentally, we were figuring on 7500-ton tankers as well. Now we figured that the cargo vessel was 15 per cent. less in cost than a tanker of equivalent size. There wasn't any spot taken on here at all. It was merely taken off of the tanker place. They were the only sized cargo vessels, I believe, that we figured on at that time.

Q. In other words, as I understand it, in figuring on a 7400-ton East Coast cargo ship, you took the cost as shown by your line for a 7500-ton East Coast tanker, and then, based on a differential of 15 per cent., as representing your estimate as to the difference between the cost of the tanker and the cargo ship, you arrived at an estimate for the cargo ship; is that correct?

A. Yes, sir, only I cannot put the final figures in.

Q. And that differential which you used, you say, was 15 per cent.?

A. Approximately 15 per cent., as nearly as I can recall.

Q. How did you arrive at an average for the East and West Coast tankers of 10,100 dead weight tons from that chart?

A. Took the East Coast tankers and added 5 per cent. to it, and we got the West Coast—we were proposing five tankers for the West Coast and three tankers for the East Coast—we multiplied the $210 a ton dead weight, or $2,100,000, whichever you wanted to use, by the number of ships in the proposal for the West Coast and multiplied the price of the East Coast by the number of ships for the East Coast, and you divided it by the total number of ships and got at the average price.

Q. As I understand it, that spot that you plotted on this second chart for a tanker of 10,000 tons was the only spot which you plotted in connection with the construction of that second chart; is that correct?

A. To the best of my recollection, that is so. I may have had other points in mind which I do not recall, but that is an outstanding point.

Q. What other points do you think that you may have had in mind?

A. I do not know.

Q. Do you think it likely that you had any other points in mind?

A. I do not know. I may have or may not have.

Q. You testified before Mr. Roberts, did you not, that that spot was the only spot that you had in connection with the reconstruction?

A. That is the only spot I recall having.

Q. In plotting the base line on your original chart, after determining the first point representing the tanker of 9100 tons, it was necessary for you to determine another point representing the cost of another ship of a generally similar type, in order to determine the drift of the line, was it not?

A. That is very desirable to do if you have anything that can be utilized for that purpose.

Q. You so testified before Mr. Roberts, did you not?

A. Yes, sir.

Q. And you testified there that before plotting the graph it was necessary to get some other ship of a generally similar type, did you not?

A. Yes, that is right.

Q. And the other ship that you referred to there were hulls 158 and 159?

A. 158 and 159 at Sparrows Point.

Q. You also testified, did you not, that in plotting the original chart it was necessary to have a third point in constructing your base line and that the zero point had been the third point used in plotting the base line on the original chart?

A. Yes, sir.

Q. The figures which you submitted to Mr. Powell in your December 18th conference were figures which you took from this reconstructed chart, were they not?

A. The figures were included in the proposal.

Q. I am asking you whether the figures which you submitted to Mr. Powell were based on this second chart which you constructed in Washington?

A. Yes, sir.

Q. In Mr. Powell's proposal of December 19th, which has been offered in evidence as Exhibit G-109,

there was added approximately $10 per dead weight ton to the figures which you submitted to him from this second chart, was there not?

A. Yes, sir.

Q. Do you recall by what process of calculation Mr. Powell arrived at this additional allowance of approximately $10 per dead weight ton?

A. I do not.

Q. You were at the hearing before Mr. Roberts, were you not, when Mr. Powell testified that that allowance represented an allowance for trading purposes?

A. He also testified—

Q. Just a moment: were you?

A. Yes, sir.

Q. Did you hear him so testify?

A. Yes, sir.

Q. That is all I have asked you.

A. All right.

Q. Will you explain the allowance of $2.50 for extra cost of steel which appears in Exhibit G-109 at page 228 of the Concession of Documentary Evidence?

A. Prior to Bethlehem's negotiations with the Fleet Corporation for the construction of vessels, Bethlehem had made a contract covering the purchase of steel on a base price, as I recall it, of six cents a pound for structural steel, and, if my recollection is right, fifteen cents a pound for boiler steel.

Q. They were higher than the War Industry Board prices?

A. Much higher.

Q. Will you proceed with your explanation as to what this allowance was intended to represent?

A. This allowance was intended to represent the

utilization, or to cover the additional cost so that you would be enabled to use this material in the construction of the vessel bid on.

Q. In other words, as I understand it, it was intended to represent the difference between the War Industry Board prices for the quantity of steel which you were under contract to purchase at the higher prices, and the higher prices of such steel spread over the tonnage contemplated by this proposal?

A. I say, that is the theory.

Q. That is correct. In preparing this data for this proposal of December 19th, you and Mr. Powell considered it likely, did you not, that you would be called on by the Fleet Corporation to submit a breakdown showing how your estimates of cost were determined?

A. Of the December 18th?

Q. In connection with your December 19th proposal?

A. I do not think so.

Q. Did you think it was good policy to submit a breakdown purporting to show how your estimates referred to in that letter were determined?

A. Mr. Powell submitted at one time a breakdown of the thing, to which I always objected. I never approved of submitting any breakdown.

Q. Did you object to his submitting the breakdown, or did you object to the breakdown which he submitted?

A. Possibly both.

Q. Possibly both? Well, now, can you not be more helpful to us in that connection and let us know whether you discussed the breakdown with Mr. Powell and whether he then submitted a breakdown which you objected to?

A. I want to be just as helpful as I can.

Q. That is all we ask.

A. If my recollection serves me right, Mr. Powell made an arbitrary breakdown on the division between material, labor and shop expense, or plant expense, and then he added to that A. S. and G. Miscellaneous. I do not know that I agreed with Mr. Powell on that, but he probably felt that it was a desirable thing to submit to the Fleet Corporation.

Q. As explaining these prices which were submitted?

A. Yes, in accordance with his views.

Q. So that you and he did discuss a breakdown at the time of your December 18th conference, in connection with the proposal which you intended to submit to the Fleet?

A. If that breakdown was made at that time, yes.

Q. Don't you think that it is likely that you did discuss the breakdown with Mr. Powell at that time?

A. If Mr. Powell made the breakdown, yes. That is what I have said.

Q. It was discussed with Mr. Powell?

A. Yes.

Q. If there was a breakdown made in connection with your December 19th proposal, it was after a discussion between you and Mr. Powell, was it not?

A. Yes.

Q. That is correct, and it was after you both approved, was it not, of the breakdown which was submitted to the Fleet Corporation?

A. No, sir.

Q. Oh, well, then you have a clear recollection that a breakdown which was made at that time and

submitted to the Fleet was disapproved of by you; is that correct?

A. I should say it was, yes.

Q. And in what respects did you disapprove of that breakdown?

A. Well, I did not feel at that time that anybody knew enough about construction costs of any kind or any description to try to deal with it in detail.

Q. And you so advised Mr. Powell?

A. Yes, sir.

Q. But he insisted on submitting the breakdown, is that correct?

A. Yes, sir.

Q. And the breakdown appears at page 228 of the Documentary Evidence, does it not?

A. I do not know.

Q. Will you look at it and see?

A. Yes, sir.

Q. That is the breakdown which Mr. Powell insisted on submitting in spite of your objection, as I understand it?

A. Well, my dear man, my objections did not amount to very much with Mr. Powell.

Q. They did not amount to very much?

A. No.

Q. Did you think that the item for administration, selling and general expense in connection with this breakdown was excessive?

A. I could not tell.

Q. You cannot tell?

A. No.

Q. Did you think it was all right?

A. No.

Q. Did you think it was a proper figure?

A. No.

Q. What would you consider to be a proper figure?

A. I do not know.

Q. You did not?

A. No.

Q. Did you consider the item for labor and materials and operating expense to be a proper figure?

A. That I have never given a thought to. I would like to reserve that.

Q. Did you think that that was a fair split between labor and material and operating expense, and administration, selling and general expense, that one should be about ten per cent. of the other? Did that look like a fair and proper estimate to you?

A. That ten per cent. was taken, as I recall it, because prior thereto ten per cent. of the cost of the material, labor and plant expense represented the A. S. and G. and depreciation. Mr. Powell had such a figure in his mind and undoubtedly it was the breakdown that he used. Now as I recall it, I did not think it would be anything like that.

Q. You did not think Administration, Selling and General would be anything like ten per cent.?

A. No, I did not.

Q. And you so advised Mr. Powell?

A. Probably did.

Q. Did you think that his Labor, Material and Operating Expense item was about right, or did you not think that that would be anything like that either?

A. I cannot tell you now.

Q. That is an important point. It seems to me that you ought to help us as much as you can as to whether that was a proper item or whether you thought it was excessive.

A. I probably did not think that was excessive.

Q. You thought that was about right?

A. Probably that would be somewhere in line.

Q. But you thought this other item of Administration, Selling and General Expense was excessive; is that correct?

A. Yes.

Q. And notwithstanding that, Mr. Powell, as I understand it, overrode you and insisted on putting that in the estimate?

A. I do not like to have it said that my superior officer overrode me. He made the decision in the matter.

Q. Your answer, in effect, is yes, is it not?

A. In effect, yes.

Q. Did you tell Mr. Powell at that time about the breakdown which you had actually made in connection with this tanker of 9100 dead weight tons and ask him to use that breakdown instead of this breakdown in connection with the tanker of 10,000 dead weight tons?

A. No.

Q. You never told him about your breakdown in connection with the tanker of 9100 dead weight tons?

A. Oh, yes, he was told how this was made up on the 9100 tons, and I think probably, if you take the breakdown there, that you won't come awfully far from these figures here.

Q. Do you think, then, in arriving at this breakdown in the letter of December 19th, that that was really based on the breakdown that you had made with the tanker of 9100 dead weight tons?

A. That I do not recall.

Q. You do not remember whether that is true?

A. No.

Q. But you had approved of the breakdown in

connection with the tanker of 9100 dead weight tons, had you not?

A. I had what?

Q. You had approved of the breakdown which you made in connection with the tanker of 9100 tons?

A. There isn't any breakdown in this letter of a tanker of 9100 tons.

Q. In connection with your preparation of the chart?

MR. EVANS: You mean he approved his own work?

MR. BROWN: He approved his own work, right. That is exactly what I mean.

BY MR. BROWN:

Q. Did you approve it?

A. Yes.

Q. While you did not approve of this breakdown in this letter of December 19th?

A. Yes.

Q. Now I am asking you whether you suggested to Mr. Powell at that time that, if he was going to use any breakdown, he should use the breakdown which you had actually made in connection with the tanker of 9100 dead weight tons?

A. When Mr. Powell's mind is made up, it is made up, Mr. Brown, and it is no use of me or anybody else telling Mr. Powell what to do.

Q. Mr. Brown, that is all very well, but I am asking you if you did not suggest to him that, instead of using this breakdown referred to at page 228 of the Concession of Documentary Evidence, he should use the breakdown which you say you had actually made in connection with a tanker of 9100 dead weight tons?

A. I cannot recall.

Q. You cannot recall, but you think you told him all about that breakdown, so that he could have used it if he wanted to instead of this other one?

A. I told him there was a breakdown, but we did not have the breakdown there.

Q. You had certain figures showing your breakdown in Bethlehem, certainly, did you not?

A. Oh, yes.

Q. And you preserved those figures with the thought that you would probably be called on to explain your figures, either by Mr. Powell or the Fleet Corporation, did you not?

A. Not by the Fleet Corporation, no.

Q. But by Mr. Powell?

A. No, not even by Mr. Powell.

Q. Was it not important at all that you should keep this data in some way on which the chart had been prepared?

A. Mr. Brown, if this had been a—

Q. Won't you answer the question?

A. Just let me answer in my way and if it is not right you can strike the thing out. The preparation at the time that the figures were made for the 9100-ton tanker and the 10,000-ton tankers, the conditions were such that nobody could tell what anything was going to cost.

Q. Just a moment.

A. On the other hand, if you are figuring on a firm proposition—

THE MASTER: Mr. Brown, suppose you reserve your explanation and you will have a perfect right to give it afterwards.

MR. BROWN: Your own counsel will ask you the question.

BY MR. BROWN:

Q. Was the breakdown referred to in the proposal of December 19th determined from the estimates which are submitted in that letter, or were the estimates determined from the breakdown?

A. Were these figures here taken from the estimate, is that what you mean?

Q. Was the breakdown determined from the estimates or were the estimates determined from the breakdown?

A. This was determined after Mr. Powell had decided on the figures he was going to put in, in accordance with the best of my recollection.

Q. In other words, you first determined what the total cost prices would be and then made your breakdown on the basis of the prices so determined?

A. That is what I understand was done.

Q. But it is a fact, is it not, that your breakdown referred to in this proposal of December 19th is a purely arbitrary breakdown?

A. Yes, I should say so.

Q. Not based on any figuring or calculation of costs whatsoever; is that correct?

A. I should say that is substantially so.

Q. In other words, it was merely to give the appearance of support to the lump sum prices which had been already put in the letter; is that correct? That was its purpose, was it not?

A. That probably is so.

Q. And that applies to the breakdown given in connection with the 7400-ton cargo vessel which likewise appears at page 228; is that correct?

A. Yes.

Q. What became of your second chart?

A. Probably torn up and put in the waste basket after it served its purpose.

Q. Do you remember that representatives of the Fleet Corporation called a conference at Washington on January 3, 1918, for the purpose of discussing your proposal of December 19th?

A. Yes, sir.

Q. That took place on January 3, 1918?

A. Yes, sir.

Q. Do you remember who was present at that conference?

A. As far as I can recall, there was Admiral Bowles, Mr. Radford, Mr. Powell, myself, and I think Mr. Cuthell was in part of the time.

Q. He was the general counsel?

A. He was the general counsel for the Fleet Corporation. I do not recall anybody else being there.

Q. At that conference of January 3rd there was considerable controversy between Powell and Admiral Bowles with respect to the propriety of the estimate submitted in your proposal of December 19th, was there not?

A. Yes.

Q. Admiral Bowles insisted that those estimates were too high, but did not submit any figures himself?

A. That is right.

Q. That is correct?

A. Correct.

Q. And Mr. Powell argued in support of the propriety of those estimates, did he not?

A. Yes, sir.

Q. Then, at the insistence of Admiral Bowles that these prices should be lowered, although Admiral

Bowles submitted no counter figures himself, it is true that Mr. Powell made several concessions, did he not?

A. Yes, sir.

Q. And each time he made a concession Admiral Bowles still insisted that the estimates were too high, although he did not submit any counter estimates; is that correct?

A. That is substantially so.

Q. Then Mr. Powell, as I understand it, finally came down to the figures representing the amounts indicated by your chart?

A. Substantially so.

Q. And he refused to go below those figures, did he not?

A. Yes, sir.

Q. Then, as I understand it, Admiral Bowles asked you whether the amounts insisted upon by Powell represented fair and proper estimates of cost; is that correct?

A. Proper prices, I think he used.

Q. Whether they represented proper prices?

A. Yes, sir.

Q. And you assured him that they did and that they were the most accurate estimates which could be arrived at under the circumstances; is that correct?

A. I do not think I went that strong. I told him I thought they were about as accurate, as well as they could be arrived at under the circumstances. I do not think I went as far as you are saying there.

Q. You said that they were the most accurate that could be arrived at under the circumstances?

A. Most accurate? Did you say I said the most accurate?

Q. Is that what you said?

A. I do not think I said that.

Q. What did you say?

A. I said I thought they were about as accurate as could be arrived at under the circumstances, or about as good as could be arrived at, something to that effect.

Q. It appears that at page 456 of the testimony before Mr. Roberts that you stated: "So far as my personal talk in the matter, I had practically nothing to say. Mr. Powell and Admiral Bowles did the talking, and it is quite firmly planted in my mind that the only thing I had to say was that the Admiral asked me if I considered that the prices were fair. After Mr. Powell decided that he was going to go no lower, he asked me my impression, and I said they were the best prices that could be arrived at under the circumstances.

Q. That is what you told Admiral Bowles? A. Yes, sir." Is that not correct?

A. Yes.

Q. And Admiral Bowles then agreed on the amounts which were insisted on by Mr. Powell; is that correct?

A. He did not let us know he had agreed on it. The first we knew was when we received the notification of the award from Mr. Piez.

Q. It appears on page 458 of the previous testimony that referred to this conference of January 3rd you testified as follows in answer to these questions: (Incidentally, these questions were asked by Mr. Evans.) -I do not pretend to ask you to tell us literally what this man said or that man said, but it appears from the record that as a result of that conference the prices that were ultimately agreed upon

were less than the prices that you submitted in your letter of December 19th? A. Yes. Q. Was the reduction in the price something which was agreed upon at that meeting of January 3rd? A. Yes." That is correct, is it not, didn't you so testify?

A. Well they were the prices which Powell set on at that time.

Q. Now let us get the question and let us get the direct answer. I ask you if you didn't testify to that? Didn't you so testify before Mr. Roberts at the previous proceeding?

A. If it is there, Mr. Brown, I surely did.

Q. And you remember, do you not, at that previous hearing, Mr. Evans asking the following questions of Mr. Powell and Mr. Powell answering as follows at page 564: "Q. It appears from the record that you did ultimately get down to those prices (the reference is to the prices which you gave him from the chart). A. Yes, sir. Q. By what process of trading did you get down to these prices? A. By the ordinary process between businessmen trying to reach a meeting of prices and Admiral Bowles reduced the price and I made a concession. Then I made another price and so on until I finally struck at a price below which I would not go and he finally accepted. Q. You were the only one who made any concessions? A. Yes. Q. He did not stop at any figure and make any concession? A. No, the conceding was all on my part. Q. When you had been Jewed down to rock bottom prices there you stuck and Admiral Bowles finally met you? A. Yes. You remember that, don't you?

A. Yes.

BY THE MASTER:

Q. I would like to ask you whether the prices that

are referred to in Mr. Piez's letter of January 5, 1918, are the same prices as you now say were agreed to at the conference when Mr. Powell and Admiral Bowles were present?

A. That is my recollection, yes.

MR. BROWN: In that connection, Mr. Master, I call your attention to the letter to which you refer, page 259 of the record.

BY MR. BROWN:

Q. Now, prior to this January 3rd conference, you had furnished Powell with the figures taken from your original chart for each of the tankers and cargo ships covered by your December 19th proposal, had you not?

A. Yes.

Q. And Mr. Powell had determined in advance of the conference that he would not accept less than the chart prices furnished to him by you; is that correct?

A. Yes, sir.

Q. Did you ever see Mr. Piez following that conference and prior to the letter of January 5, that he wrote to the Bethlehem Company?

A. To the best of my recollection I had never been in Mr. Piez's office prior to, and I never discussed with Mr. Piez anything in connection with these contracts.

Q. You never knew of any request by Mr. Piez or Mr. Powell or anyone else that these prices named in the December 19, proposal should be reduced?

A. You mean in a conference with Mr. Piez?

Q. Did you know of any request made by Mr. Piez to any representative of the Bethlehem Company that the prices should be reduced?

A. No.

Q. At no time?

A. No.

MR. BROWN: I would like to offer a letter previously offered as Exhibit G-32, which is a letter addressed by Chauncey G. Parker to Henry P. Brown, under date of January 17, 1927, together with an enclosure there referred to and which I understand it is admitted was submitted to counsel for Bethlehem.

MR. EVANS: That is right.

THE MASTER: There being no objection it will be admitted as Exhibit G-32.

BY MR. BROWN:

Q. Were you advised about the date of this letter, which is January 17, 1927, that the Fleet Corporation has requested all figures, reports, working papers and other data used by Bethlehem in connection with its estimates for the ships in controversy?

A. Yes.

MR. BROWN: I would like to offer as Exhibit G-33 a letter which was previously offered as Exhibit G-33.

THE MASTER: There being no objection, it will be admitted as Exhibit G-33.

MR. BROWN: This is the letter addressed by Ralph B. Evans to Henry T. Brown, under date of March 22, 1927, in which, in reply to the request for cost data referred to in Exhibit G-32, it says as follows:

"Estimates of costs for contract ships. We

have and will furnish the working papers used in making these estimates, but these will not show estimates of costs in detail as requested."

BY MR. BROWN:

Q. Did you so advise counsel for Bethlehem at that time?

A. The only thing that I ever told counsel at that time that we did not have any of the original figures and all that I could give him was a re-construction.

Q. You told counsel at that time you did not have any of your original figures and all that you could give them was a re-construction; is that correct?

A. I don't know whether it was that time or not but that is the only thing I ever told them in connection with that subject.

Q. And it was prior to that time?

A. It must have been.

Q. You did certainly tell them what you had prior to January, 1927, did you not?

A. Oh, yes, sure.

Q. So far as you can recall you never told counsel for Bethlehem that you had available the working papers used in connection with your estimates. Is that correct?

A. That is correct.

MR. BROWN: I would like to get on the record, if there is no objection, that a photostatic copy of the chart which has been offered in evidence as Exhibit G-34 was submitted to Government's counsel in August, 1927 and was submitted in pursuance of Mr. Evans' letter of March 22, 1927, which has been offered in evidence as Exhibit G-33.

BY MR. BROWN:

Q. When did you first advise Bethlehem counsel as to the existence of this second chart which you say you constructed in Washington?

A. I don't recall.

Well I wouldn't be at all surprised that I did tell them right after I went back on to the case in November, 1924.

Q. It is very likely that you told Mr. Cravath's office of the second chart at that time?

A. More than likely that I did.

Q. It appears from the record of the previous proceeding before Mr. Roberts that this second chart was not referred to in your testimony which was taken on May 20 and May 22, 1929, and that you testified on May 22, that all Bethlehem's proposals had been made on the basis of the first chart. Is that correct?

A. I didn't testify to that at all. You will find that I testified there was a second chart prepared.

Q. Wait a minute. I am referring to your testimony given on May 20th and May 22nd, 1929. Of course I know that on June 10th, 1929, you were recalled by Bethlehem counsel, and then, for the first time, disclosed the existence of the second chart. Now I ask you again, isn't it a fact that at the proceeding before Mr. Roberts you testified on May 20th and May 22nd, 1929, and that no reference was made by you as to the second chart, and that on May 22nd, you testified that all Bethlehem's proposals had been made on the basis of the first chart?

A. That is probably so. Yes, I recall that the second chart did not come out until some time later. I don't recollect whether it was because I was not asked about it or why it was.

Q. The question and answer appeared on page 196 of the record, as follows, and this is on re-direct examination: "Q. I think you have already testified to that effect or else it has been admitted in evidence but I will ask you again, all the contract proposals were made on the basis of this chart that was made by you? A. They were used as the base for the proposals." And the chart that you referred to in that testimony was this first chart, was it not? Well, there had not been any reference to any other chart at that time?

A. No, there had not been.

Q. And the first reference to the second chart was on a later hearing, June 10, 1929, when you were recalled?

A. Whatever the date was.

Q. When you were recalled by Bethlehem's counsel for the principal purpose of telling about the second chart and how it had been constructed by you in Washington. That is correct, is it not?

A. I daresay it is.

Q. But you remember that testimony, don't you, Mr. Brown?

A. Well not all in detail. My goodness, there is a limit to what a man can carry. Be reasonable.

Q. Can you think of any reason, or do you know of any reason why Bethlehem failed to notify Government counsel as to the construction of the second chart prior to June 10th, 1929?

A. The only answer that I can make to that, it seems to probable, is when I went back with Bethlehem and they had an attorney from Cravath & Henderson's office; his name was Tex Moore, that is what they called him, and he was assigned to this case. He worked on it quite some time and he was

given a lot of information, a lot of data and he made a lot of memoranda and he then left the Cravath & Henderson office and the matter was taken up by Mr. Robison and there were quite long periods when nothing was done in connection with this case. Now whether I told Mr. Robison or told any of Cravath & Henderson's attorneys or Mr. Evans of the existence of this second chart I don't recall. I know I recollect telling Mr. Moore originally in reference to it.

BY THE MASTER:

Q. That is Tex Moore you are talking about?

A. Tex Moore.

BY MR. BROWN:

Q. Then it is quite possible—

MR. EVANS: What is the use of spending time on it. We knew all about the construction of this second chart.

MR. BROWN: Do you want to make a statement on the record?

MR. EVANS: If you think it is important I will.

MR. BROWN: I do not want you to put anything on the record at this time but you can do it in your own case.

MR. EVANS: I object to inquiring of this witness as to the reasons counsel may have had or the reasons for not doing this, that or the other thing in dealing with the case.

THE MASTER: The witness is obviously not competent to testify to that. He can only testify to what information he gave to those representing Bethlehem or the Government.

BY MR. BROWN:

Q. Then it is quite possible that no Bethlehem counsel other than Mr. Moore was advised as to the existence of this second chart prior to the hearing before Mr. Roberts which took place in June of 1929; is that correct?

THE MASTER: You mean by this witness. I don't want to indulge in possibilities outside of this witness. You mean is it possible he never mentioned it?

MR. BROWN: That is right.

THE WITNESS: Yes, it is possible that I never have.

BY MR. BROWN:

Q. Do you consider it likely?

A. I would hardly consider it likely.

Q. But, at any rate, you don't ever remember having discussed this second chart with any counsel representing Bethlehem prior to the hearing before Mr. Roberts in June, 1929 other than Mr. Moore?

A. That is my recollection.

BY MR. EVANS:

Q. What is your recollection?

A. That I discussed this with Mr. Moore and I don't recall discussing it with any of the other attorneys prior to the time we went on trial.

BY MR. BROWN:

Q. Prior to that hearing in June 1929?

A. Yes. It is possible it was discussed and it is possible that it was not.

Q. As far as you were concerned, after your reemployment by Bethlehem in October or November, 1924, you were prepared to furnish your explana-

tion of this first chart at any time that you might have been called on to do it, were you not?

A. I don't recall—

Q. I mean after you had had time, of course.

A. After I had had time to look into it, yes.

Q. As far as you were concerned, you were prepared to submit your explanation to anyone who might have asked for it after you had had a chance to get your figures together and see how the original chart had been prepared?

A. Yes.

Q. Were you advised that the original chart was or was to be submitted to Government's counsel without any explanation of its basis? Was that subject discussed with you in advance of submissions to Government counsel?

MR. EVANS: That is objected to.

(Objection sustained.)

MR. BROWN: I offer in evidence letter dated January 16, 1928, addressed to Ralph B. Evans by Joseph J. Brown, previously offered as Exhibit G-35.

THE MASTER: There being no objection it is admitted as Exhibit G-35.

MR. BROWN: I would like to read that letter into the record:

"Several months ago you furnished us with a diagram or chart which I understand was represented by you to be the only working paper used by Bethlehem in making its various estimates of cost for the contract ships involved in the above controversy.

Since then, as you know, I have on several occasions endeavored to ascertain whether or not Bethlehem would be willing to furnish us with an explanation of the manner in which this diagram or chart had been used in making the estimates in question as well as an explanation of the following notation thereon: 'June—1922'.

Will you please advise us as to Bethlehem's final position with respect to this explanation."

I offer in evidence letter dated January 18th, 1928, addressed by Ralph B. Evans to Joseph J. Brown, previously offered in evidence as Exhibit G-36.

THE MASTER: There being no objection it is admitted as Exhibit G-36.

MR. BROWN: Reading as follows:

"I have your letter in which you ask whether we would be willing to furnish you with an explanation of the diagram or chart used in making up the estimates for the original contract ships.

As I have told you, this chart was made up by Harry Brown, who was at the time technical manager of Bethlehem Shipbuilding Corporation, and had previously been vice-president of the Fore River Shipbuilding Co., and its successor, the Fore Shipbuilding Corporation. Whatever working papers he had in making up his figures have been destroyed, and even if they were in existence would probably be unintelligible to anyone but himself. Therefore your request amounts in

substance to a request that we furnish you in advance of the trial with a statement of what Mr. Brown will testify to. In my experience this is rather an unusual request, but I am quite willing to furnish you a copy of his statement as given to us on condition that you will agree that this is to be considered as a document produced at the call of the other side, and that in the event Mr. Brown is unavailable as a witness at the trial, his statement may be offered in evidence by either party as an explanation of the chart, with the same effect as if it were a part of the chart itself."

I offer in evidence as Exhibit G-174 a letter previously offered as Exhibit G-174 being a letter addressed under date of June 29, 1928, to Joseph J. Brown by Ralph B. Evans.

THE MASTER: There being no objection the letter is admitted as Exhibit G-174.

MR. BROWN: Reading as follows: "I am handing you herewith this statement in explanation of the graph or chart which was the basis of the estimates of cost on the contract ships.

I am furnishing this in the hope that it may facilitate your work of preparation and more narrowly define the issue on the allegation of fraud.

It is understood that this paper is not to be used by either of us as substantive evidence, although you are at liberty to use it in cross-examination of Mr. Brown to the same extent as you might use a signed statement for that purpose.

It is also understood that you are to furnish me, reasonably in advance of the hearing, a memorandum of your expert's comments or criticism of Mr. Brown's estimate and that this memorandum will be as full and as explicit as the memorandum which I am enclosing you."

I agree, on behalf of the Government, that prior to this letter we had refused to accept Mr. Brown's explanation on the basis referred to in Mr. Evans's letter which has been offered in evidence as Exhibit G-36.

Mr. Evans, have you any objection to my offering in evidence the Exhibit which accompanied your letter referred to as Exhibit G-174?

MR. EVANS: No.

MR. BROWN: I then offer in evidence a statement or explanation referred to in Exhibit G-174, which statement or explanation was offered in the previous proceeding as Exhibit G-154.

THE MASTER: It is admitted as Exhibit G-154.

MR. BROWN: Mr. Evans, have you any objection to my offering in evidence a statement dictated by you, under date of June 22, 1928, offered in the previous proceeding as Exhibit G-155?

MR. EVANS: No, if you make a proper explanation of what it is and the circumstances under which it was given to you.

MR. BROWN: Perhaps you better give that. I don't want to run counter to any agreement on this subject. I make the offer.

THE MASTER: Without any explanation?

MR. BROWN: With the thought that Mr. Evans better make the explanation.

MR. EVANS: The explanation is that this is a memorandum which I dictated and gave to Mr. Brown, giving him my understanding of the explanation of G-34½ a photostat copy of which I had given him previously.

MR. BROWN: Is that your explanation?

MR. EVANS: Yes.

MR. BROWN: I thought possibly you cared to say on what basis that understanding was based?

MR. EVANS: What do you mean by that?

MR. BROWN: I think the document should not just be left in space as a possible guess by you as to the methods employed by Mr. Brown, because it was my clear understanding at the time this was prepared, and if I remember you referred to a memorandum submitted to you at the time by Mr. Brown.

MR. EVANS: That is right, submitted to me by Cravath's office.

MR. BROWN: Then we can add to Mr. Evans's explanation, I trust, that Exhibit G-155 was based on information supplied by Mr. Cravath's office.

BY MR. BROWN:

Q. As I understand it, after the preparation of the original chart, you kept none of the working papers or data employed in its preparation; is that correct?

A. No, they were not kept.

Q. So that whatever the working papers or data may have been, they were never used by you subsequent to the preparation of the original chart; is that correct?

A. That is correct.

Q. And the chart constitutes the sole record of the estimates made by you; is that correct?

A. That is right.

Q. And in the absence of information or particular cost facts and allowances used in connection with the preparation of this first chart it would have been impossible for anyone to fully understand the chart, would it not?

A. They would understand the chart readily enough but they would not understand the preparation of the chart.

Q. They would not understand the basis of the preparation?

A. That is right.

Q. Then even you could not understand how you arrived at the chart prices unless you determined in some manner the particular cost factors and allowances used in connection with its preparation?

A. That is correct.

Q. You left Bethlehem employment in June, 1922, did you not?

A. Yes, sir.

Q. And then you were re-employed, as I understand it, about November, 1924, for the purpose of

assisting then in connection with the trial of these cases?

A. That is right.

Q. Now after your re-employment by Bethlehem in the latter part of 1924, as I understand it, you got from the accounting and purchasing departments of Bethlehem, such information as was then available in order to enable you to determine the manner in which your original chart has been prepared; is that correct?

A. Not the manner in which it had been prepared, but the factors in developing it.

Q. In order to determine the basis on which you had prepared the original chart?

A. Yes, the basis.

Q. And at that time, as I understand it, you had none of the original cost data available which you had used in connection with the original construction of the chart?

A. That is right.

Q. Now, as I understand it, in connection with your work in the explanation of the chart after your re-employment in 1924, you ascertained from the Accounting or Estimate Departments of Bethlehem the total returned cost of Job 12 materials for Hull 253, did you not?

A. Not having any such information available, it was necessary for me to get it from the Accounting Department.

Q. And likewise, with respect to the returned cost for materials of Hull 158?

A. Yes.

Q. You likewise ascertained at that time, from the Accounting or Purchasing Departments, the total returned cost of all materials for Hull 253?

A. Yes.

Q. And the same thing in connection with Hull 158 and Hull 159?

A. Yes.

Q. And you also again ascertained from the Accounting or Purchasing Departments the average delivered base prices of the plates in Job 12 for Hull 253?

A. Yes.

Q. And then you ascertained from the Purchasing Department the cost of certain items of materials other than Job 12 in connection with Hull 253?

A. Yes.

Q. In order to determine your factor of increase with respect to materials outside of Job 12?

A. Other than Job 12.

Q. And you also ascertained the cost of similar materials as of December 1917; is that correct?

A. Yes, about November 1917, or whatever the month was.

Q. November or December of 1917?

A. November, I guess it was.

Q. And you likewise ascertained the average hourly earnings of direct labor for Hull 253? That, as I understand it, was not one of the things which you remembered but which you had to obtain from the Accounting or Purchasing Department?

A. No, some of the factors were pretty clear in my mind to use.

Q. May I interrupt you. I am endeavoring to state now the thing you did not remember as distinguished from certain factors or percentages which you did remember, and isn't it a fact that you

had to ascertain the average hourly earnings of direct labor in connection with Hull 253?

A. I did not use the hours of labor.

Q. The average hourly earnings, you didn't use that?

A. We used the average hourly earnings but not the hours of labor. There is merely a direct ratio of one to the other.

Q. That was a slip of mine. You did have to ascertain the average hourly earnings and direct labor for Hull 253; is that correct?

A. Well that had been established some time previous.

Q. You mean to say that when you came back and made up your explanation that you did not have to obtain information as to the average hourly earnings of direct labor in connection with Hull 253?

A. I did have to get it but I didn't just recall exactly what the figures were.

Q. And you had to ascertain the total cost of direct labor in connection with Hull 253?

A. Yes.

Q. And likewise the total returned cost of labor for Hulls 158 and 159?

A. Yes.

Q. Now the balance of the figures and factors referred to in your explanation of this first chart, as I understand it, were based upon memory. Can you think of anything else that you had to obtain? I think I have covered everything?

A. I should say largely upon memory. They were all pretty much round figures.

Q. Did you keep any data showing how you arrived at the factor of 1.75 in connection with your work after your re-employment by Bethlehem?

A. No, I didn't.

Q. And that was based on a comparison of the cost of certain materials outside of Job 12 in November, 1917 as compared with the cost of similar materials in connection with Hull 253; is that correct?

A. And also taking into consideration the manufactured products that you could not get any comparison on.

Q. I am talking about your work after your reemployment in the latter part of 1924.

A. Well so am I. We got as much of a proportion of the stuff as we could but the factor of increase on the outside material, that was difficult to remember. My recollection is that there were certain things that stood out, such as 50 cents an hour.

Q. But the basis of determining the factor 1.75 was what I have suggested, was it not?

A. Yes.

Q. By comparison of these prices?

A. Yes.

Q. And that comparison was based on certain principal items of material, was it not?

A. Well they were used to form the judgment but I couldn't say that we just simply took pig iron and copper and paint and oils and coal and all sorts of things just at that time and then said that showed a 75 per cent. increase, because there are so many other articles that entered into it.

Q. But the basis of your explanation, was it not, was a comparison of cost data furnished to you by the Accounting Department, showing the cost of certain items of materials as of November 1917, as compared with the cost of similar materials in connection with Hull 253?

A. Yes, wherever it could be possible to obtain it.

Q. Why didn't you keep that data in order to substantiate your present position with respect to this factor of 1.75 and show us exactly what materials were used and how you arrived at that factor of 1.75?

A. Well that is very difficult to give you.

Q. At any rate you haven't kept such data?

A. No, I have not.

MR. BROWN: I would like to offer in evidence a letter referred to in the previous hearing as Exhibit G-176.

THE MASTER: There being no objection, it is admitted as Exhibit G-176.

MR. BROWN: Being a letter dated September 21, 1928, addressed by Ralph H. Hallett to Ralph B. Evans. With the Master's permission I will read only the last paragraph of that letter, while offering the whole of it. "It is also requested that we be given as far as possible a list of the items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12".

BY MR. BROWN:

Q. Were you advised that such a request had been made?

A. I presume that I was.

MR. BROWN: I offer in evidence Exhibit G-177, being a letter dated September 25, 1928, addressed to Mr. Evans by Mr. W. E. Robison.

THE MASTER: There being no objection it is admitted as Exhibit G-177.

MR. BROWN: A copy of this was submitted to counsel for the Government. With the Master's permission I will read only the first and last paragraphs.

The first paragraph reads:

"The following is in reply to inquiries and requests for additional information contained in letters from Mr. Joseph J. Brown to you dated September 7, 1928 and September 21, 1928, copies of which you sent me on the same dates."

And the last paragraph reads:

"Request for list of items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12."

"No record of such items and prices has been preserved."

THE MASTER: I note in the opening paragraph which refers to a letter of September 21, 1928, from Joseph J. Brown. That must mean the letter from Ralph H. Hallett?

MR. BROWN: There is no doubt about it.

THE MASTER: There is no letter that you wrote at the same time?

MR. BROWN: No, sir.

BY THE MASTER:

Q. I am curious, if I may interject a question here—in your description of the first chart that we have here before us, as I recall it, you took an arbi-

trary percentage of 30 per cent. for inefficiency in labor, as I recollect?

A. Yes.

Q. When you came to re-construct this chart without that original data before you, did you attempt to verify that factor of 30 per cent. for inefficiency of labor by experience or did you just arbitrarily take the same factor?

A. Took the same factor.

Q. Do you happen to know as a matter of fact how near that factor was in actual experience? Did anybody ever attempt to get that figure up?

A. Yes. Take the first ships built under the contracts, the loss by inefficiency was very much higher than 30 per cent. but as your work went along and the Armistice was signed your factor for inefficiency increased. In other words the last ship labor rate was higher but cost less money than the first ship.

Q. Did that ever get below 30 per cent.?

A. Yes, your last ship got down about as efficient on labor as before the war.

Q. But that was not true until after the Armistice?

A. No, sir.

BY MR. EVANS:

Q. These last ships were finished when?

A. 1920.

BY THE MASTER:

Q. But, as a matter of fact, the re-construction figures used for the explanation of the preparation of this chart took into consideration the same factor of 30 per cent. as you had used originally?

A. Oh yes, and that 30 per cent. was only arrived at after thorough discussion with the man-

agers of the plants. That was not a thing that was just picked out of the air.

Q. No, I understood you in your testimony earlier in the day, you said that was not your own guess but rather that it was the result of discussion with others?

A. Yes, sir.

BY MR. BROWN:

Q. So, as I understand it, on the first of the contract ships that were completed your factor of anticipated increase, your factor represented anticipated increase in the inefficiency of labor, was actually exceeded in connection with those ships; is that correct?

A. I wouldn't say that.

Q. I thought you had said it?

A. No. What I said was is whether it is the particular contract ships or ships built subsequent to the ones we selected for the purpose, exceeded the 30 per cent., ships which were under construction but not completed. Now I think I would be perfectly safe in saying that you would see an increase in efficiency all the way down at all the plants.

Q. An increase in efficiency?

A. An increase in labor efficiency.

Q. When you were re-employed in the latter part of 1924 how did you determine the average hourly earnings under the Boston Navy Yard scale in connection with your work?

A. We used a round figure of 50 cents an hour and that seemed to stick in my head.

Q. That stuck in your memory?

A. Yes.

Q. As I understand it this 10 percent. allowance referred to in your explanation in connection with

a tanker of 9100 tons represented an allowance of approximately $70,000, for war zone requirements and $15,000. for hotel equipment and navigating outfit; is that correct?

A. That is correct.

Q. So that the balance would be the allowance for the extraordinary contingencies, is that correct?

A. Yes, sir.

MR. BROWN: I offer in evidence letter previously offered as Exhibit G-21.

THE MASTER: There being no objection it is admitted as Exhibit G-21.

MR. BROWN: Addressed to Ralph B. Evans, under date of July 6th, 1928, by Joseph J. Brown. With the permission of the Master I will read only certain parts relating to this present question:

"In pursuance of our conversation with you of yesterday, the Government would like to have the following information if Bethlehem is willing to furnish the same at this time:

"5. Brown's estimate as to the total cost of armed guard equipment and war zone requirements to be furnished for tankers of 9100 and 14950 d. w. t., as well as the respective costs of labor and materials in connection therewith.

6. Brown's estimate as to the respective costs of hotel equipment and navigation outfit to be furnished for the tankers of 9100 and 14950 d. w. t.

7. Brown's estimate as to the cost of 'other

contingencies" relating to the construction of tankers of 9100 and 14950 d. w. t.

8. The nature of the 'other contingencies' included in Brown's estimate with respect to these ships.

9. Explanation of the discrepancy between Brown's estimate as to the cost of all materials required for the construction of a tanker of 9100 d. w. t. and the actual cost of such materials with respect to Hulls 1376 to 1381, inclusive."

BY MR. BROWN:

Q. Were you so advised that such a request had been made?

A. I suppose so.

MR. BROWN: I offer in evidence letter referred to in the previous proceeding as Exhibit G-22.

THE MASTER: There being no objection it is admitted as Exhibit G-22.

MR. BROWN: Which is a letter addressed to Benjamin B. Frick by W. W. Robison, and with the permission of the Master I will read only parts of the letter:

"With further reference to Mr. Brown's letter to Mr. Evans of July 6, requesting certain information, I send you

"Referring to items 5, 6, 7 and 8 of Mr. Brown's letter of July 6, I would say that we are advised that no separate estimates were made of the cost of armed guard equipment, war zone requirements, hotel equipment, navi-

gation outfit or other contingencies, but that the cost of these was lumped in the ten per cent (10%) allowance mentioned in previous information furnished to Mr. Brown.

With reference to Mr. Brown's request in item 9 of his letter for 'explanation of the discrepancy between Brown's estimate as to the cost of all material required for the construction of the tanker of 9100 d. w. t. and the actual cost of such materials with respect to hulls 1376 to 1381, inclusive', we do not think that we should be asked to furnish information of this character or that it is information which will be of any assistance to Mr. Brown in the preparation of his case, particularly in view of the fact that if any explanation of any such discrepancy becomes material, it will be so as a matter to be proved as a part of our case rather than as any part of the Government's case."

BY MR. BROWN:

Q. Prior to the time of your re-employment at the end of 1924, had any representative of Bethlehem ever requested you to explain the basis of the estimates that you had submitted to the Fleet Corporation?

A. I don't recall it.

Q. As far as you can recall no representative of Bethlehem, subsequent to the time of the consummation of these contracts and prior to the time of your re-employment in the month of November, 1924, had ever displayed any interest whatsoever in the estimates which you submitted or on the question as to the basis of such estimates, so far as you know?

A. So far as I know.

Q. And, so far as you know, during that period

no representative of Bethlehem knew the basis of the estimates which had been submitted to the Fleet Corporation; is that correct?

A. Correct.

MR. EVANS: Are you talking about counsel now, or Mr. Powell?

MR. BROWN: Well, make it all inclusive?

MR. EVANS: Was your answer directed to that?

THE MASTER: I am not sure that the witness understood the question.

MR. BROWN: This is during the period between the consummation of the contracts and his re-employment in 1924. I don't know whether Mr. Evans understood the question.

MR. EVANS: Of course the consummation of the contract is also rather a vague term.

THE WITNESS: Do you mean the completion of the contracts?

MR. BROWN: Execution of the contracts is what I had in mind.

THE WITNESS: I thought you meant upon the completion of the contracts or during some period when they tried to effect a settlement between the two parties, after that had started.

MR. BROWN: I don't get that.

THE WITNESS: I thought that you meant was there anybody came to me to ask in reference to these matters during a period when they tried to effect a settlement of the contract.

BY MR. BROWN:

Q. Suppose we direct the question at the present

time to that. Did anyone representing the Bethlehem Company come to you during that period and ask you as to the basis of your estimates?

A. No.

Q. And the controversy that you refer to was the controversy between representatives of Bethlehem and representatives of the Fleet Corporation with respect to base rates applicable to these contracts, was it not?

A. I don't know what it was.

Q. You remember the controversy that was taken in hand by the Wage Reimbursement Committee of the Shipping Board?

A. No, I don't know anything about the conference except on one occasion when I conveyed a message from the Union Plant to a man down there but I had nothing to do with the labor or wage situation. That was out of my department altogether.

Q. So that prior to the time you left Bethlehem you had no knowledge of any controversy which may have then existed between representatives of the Fleet Corporation and representatives of Bethlehem with respect to the wage rates applicable to these contracts in controversy?

A. I knew nothing about it.

Q. To make my previous question clear, do I understand that from the time of the execution of the contracts in controversy until subsequent to your re-employment in Bethlehem at the end of 1924, that no inquiry was made of you by any representative of Bethlehem as to the basis of these estimates which had been submitted to the Fleet?

MR. EVANS: There again your question is hardly intelligible. Contracts were executed

at various times. Extending over what period of time?

BY MR. BROWN:

Q. Do you understand the question?

A. Well I had just the same mind with Mr. Evans that the contracts extended over some time, from in December they carried along through quite a few months.

Q. We will say from January 3rd?

A. And I will answer it this way, Mr. Brown, and it may be satisfactory to you and may be perfectly clear, that after the prices had been established for the first vessels of the various sizes, I can say with quite assuredness that nobody had asked me anything in reference to them, if that is what you mean.

Q. Until after your reemployment by Bethlehem in 1924?

A. Yes.

Q. Since your re-employment in 1924 your headquarters has been in New York, has it not?

A. For the first period I would say extending over probably four months or three months, I was at Bethlehem, at the main office.

Q. In New York or in Bethlehem?

A. No, in Bethlehem.

Q. And after that time have you been at their headquarters in New York off and on?

A. Yes.

Q. Mr. Powell has been located in New York since he left Bethlehem, has he not? That has been his headquarters, has it not?

A. No, not since he left Bethlehem.

Q. Where has his headquarters been?

A. He was in Boston quite a long period before going to New York.

Q. His business headquarters were in New York, were they not?

A. No, he was in Boston for quite a long time.

Q. It has been in New York for the last several years, has it not?

A. I don't know.

Q. After your re-employment in November of 1924, and prior to the hearing before Mr. Roberts, did you ever have any discussions with Mr. Powell relating to the present litigation?

A. No.

Q. No discussions whatsoever?

A. No.

Q. You never took up the question of this chart with him or the basis of the chart or had any talk or correspondence with respect to the estimates which he and you had submitted to the Fleet Corporation?

A. No discussion.

Q. Well, what did you have?

A. The only thing that I can recall having is that I showed Mr. Powell the chart and asked him if he remembered it and he said he did not. He said he remembered a chart but he thought the curves ran the other way.

Q. When did you show him the chart?

A. Oh, that is some time between 1924 and before the hearing before Mr. Roberts.

Q. You showed Mr. Powell the chart?

A. Yes.

Q. Where was that?

A. In New York.

Q. In whose office?

A. In my office.

Q. Where was your office?

A. 25 Broadway, 15th floor.

Q. Is that the Bethlehem office?

A. That is the Bethlehem office in New York.

Q. Where was Mr. Powell's office at that time?

A. I don't know.

Q. How did you get in touch with him?

A. He sometimes dropped in to see me.

Q. He sometimes dropped in to see you?

A. Yes.

Q. Then you have seen him on some occasions during this period?

A. Yes, I have seen him.

Q. That is the only occasion that you ever discussed this case with him?

A. I wouldn't say that I discussed it with him at any time.

Q. In other words on these occasions when he did come in to see you you never brought up the question of this case or its preparation?

A. I told you I brought it up and showed him the chart.

Q. Except on this one occasion?

A. That is the only time he saw the chart and that is the only recollection I have of taking the thing up seriously with him.

Q. The chart was in your office at that time when he came in?

A. Yes.

Q. Do you recall whether it was a conference arranged by you for the purpose of discussing the chart or whether he just happened to come in the office?

A. My recollection is he just happened to come in.

Q. And you produced the chart?

A. Yes.

Q. And asked him if he remembered the chart?

A. Yes.

Q. And he said he did not remember anything about it?

A. Yes.

Q. And did you attempt to refresh his recollection by explaining to him that it was a chart which you had prepared in accordance with his instructions to prepare yourself for this Fleet program, or that you had prepared it in the manner that you are now explaining to us?

A. I don't think we went into any such detail, no.

Q. When you asked him if he remembered it and he said no you then dropped the subject and put the chart away?

A. That is probably what happened.

Q. As soon as you found out that he had no memory on the chart you dropped it?

MR. EVANS: Objected to. He didn't say he had no memory.

BY MR. BROWN:

Q. After you showed the chart to Mr. Powell you asked him if he remembered it and he said no, and as I understand it you dropped the subject?

A. As far as I can recall that is about as far as it went.

Q. How long before the hearing before Mr. Roberts did that conference take place?

A. I don't know.

Q. Do you recall when Mr. Powell testified in a hearing before Mr. Roberts that he had no discussion of that chart with you or its explanation at any time that he could remember before that hearing and

that he never could remember discussing it with you?

A. I don't recall that. He said he never saw the chart.

Q. Could you tell us whether it was one, two or three years before the hearing before Mr. Roberts?

A. No, I couldn't tell you.

Q. Was it before you prepared this explanation which has been offered in evidence as Exhibit G-154? Was it before you had prepared any written explanation as to the basis of the chart?

A. No, it was after that.

Q. Then you probably showed him that explanation, did you not?

A. I doubt it. I may have but I doubt if I showed it to him.

Q. And that is all the discussion, so far as you remember, that you have had with Mr. Powell on the subject of this chart during the period that we have mentioned?

A. On this chart, yes.

Q. Or on the subject of the basis of the estimates?

A. Or on the subject of the basis of the estimates.

(Adjourned to 10 o'clock A. M. March 31, 1931.)

HARRY BROWN, examination resumed.

BY MR. BROWN:

Q. As I understand it, after establishing the two spots on your original chart for tankers of 9100

dead weight tons and 14,950 dead weight tons, it was a simple matter to plot the balance of your lines on the chart?

A. Comparatively simple, yes.

Q. A comparatively simple matter, and, as I understand it, the East Coast tanker total cost line was drawn along the edge of a baton, which was held in place by ducks at two spots, representing estimates for tankers of 9100 and 14,950 dead weight tons; is that correct?

A. There may have been an additional duck along the line below it, just running it around just with your eye, or you may run a straight edge down through there, then fair it into your zero.

Q. But it is your recollection that that line was drawn along the edge of a baton held in place by ducks at the two spots that I have mentioned.

A. Yes.

MR. BROWN: I think this would be an appropriate place to offer in evidence a baton and duck for the information of the Master.

The Exhibits offered were admitted in evidence, the baton being designated Exhibit G-182 and the duck Exhibit G-183.

BY MR. BROWN:

Q. Likewise, as I understand it, the East Coast cargo total cost line was drawn along the edge of a baton held in place in two spots, representing your estimates for cargo ships of 10,000 and 15,000 dead weight tons; is that correct?

A. The original line was put in for it, yes.

Q. Won't you answer the question, whether it was drawn that way or not?

A. Yes.

Q. The answer is yes?

A. Yes.

Q. And the West Coast tanker and cargo total cost lines, as I understand, were also drawn along the edge of a baton as in the case of the other lines?

A. Yes.

Q. As I understand it, the spot on the 9100-ton line, which is designated with the capital letters F. R., was intended to represent the price of $1,865,000, which was the base price agreed on for ships of that tonnage which were subsequently included in the Fore River Contract 183, was it not?

MR. EVANS: That is objected to. I have allowed the Government to cross examine this witness because I thought it would be a saving of time, but when we get into the question of what certain spots on that chart are intended to represent, I think Mr. Brown should conduct his examination with due consideration of the fact that Mr. Brown is called as his witness, and that he be not permitted to put answers in the witness's mouth.

MR. BROWN: I do not know whether you gentlemen have made up your minds on that or not, but I certainly think by this time I have a right to cross examine this witness, as it is fully understood by everybody that he is a hostile witness. He is the man that we charge primarily with having committed this fraud on the Government. It is understood by everybody and he is a witness that it was necessary for us to call, because until we showed the basis of the estimates as described by them, we were not in

position to say whether the method they employed was proper or improper.

THE MASTER: Up to now, so far as this hearing is concerned, Mr. Brown has been quite frank in his answers to your questions and I have not seen any evidence yet of a desire not to give you what you are asking. As I understand it, all Mr. Evans' objection relates to is the form of your question, and it may be that it would be helpful all along in getting a more direct and comprehensive answer if you would simply direct your questions to the subject matter and let Mr. Brown answer. If he shows that he is trying to evade your question you will get the benefit of that impression on the Master. I think we will all get along more easily in that way until he proves to be hostile. The moment he does, we will meet that situation when it arises.

MR. BROWN: That is perfectly acceptable.

BY MR. BROWN:

Q. Referring to the spot which appears on the chart on the 9100-ton line, which is enclosed in a circle and which is designated with the capitals F. R., I ask you what that spot was intended to represent?

A. That spot was intended to represent the result of the estimates which I had prepared for the duplication of the 9100-ton tank vessel.

Q. I ask you whether in your previous testimony before Mr. Roberts you did not testify that that spot was intended to represent the contract price of an East Coast tanker of 9100 tons which was subsequently included in Contract 183; did you not so testify?

A. That it was the contract price?

Q. That that spot was put on as intended to represent the contract price of a tanker of 9100 tons dead weight subsequently included in Contract 183?

A. No.

Q. You never so testified?

A. No.

Q. Is it not a fact that you testified before Mr. Roberts, as appears at pages 206 and 207 of the transcript, as follows: "A. Now wait a minute, wait a minute. After getting this off here and they decided to build 7500-ton tankers at the Harlan & Hollingsworth plant, that was spotted on there as tankers were built there. The same way we have this (indicating) was put on here at the Fore River price and here is the S. P., which is taken there as the Sparrows Point plant." You so testified, did you not?

A. That is substantially right, but it is awfully confused.

Q. The spot that you referred to as indicating the Fore River price was the spot that we are talking about on the 9100-ton line, was it not?

A. That was a base price.

Q. Was not that the spot you were referring to in that testimony?

A. I dare say it was.

Q. And then your testimony goes on as follows: "Q. Just a minute. This Fore River spot at the 9100-ton mark— A. That is right. Q. As I understand now was put on after you made your contract for the construction of those ships; is that right? A. Very likely, yes." You so testified, did you not?

A. Yes.

Q. All right, then, it appears from that testimony, as I understand it, that that spot on the

9100-ton line designated F. R. was put on the chart subsequent to its preparation as indicating the price agreed upon in Contract 183; is that correct?

A. The F. R. was probably put on later, but not the spot.

Q. Oh, the spot was not put on later?

A. No. That was the spot we used in connection with the preparation of the chart.

Q. You have said that you testified to the contrary in the testimony before Mr. Roberts. Will you explain which testimony you now say is correct?

A. It is unquestionable we figured out—

Q. I will read you again what you said before Mr. Roberts, so that there will be no doubt about it. "Q. Just a minute. This Fore River spot at the 9100-ton mark— A. That is right. Q. As I understand now was put on after you made your contract for the construction of those ships; is that right? A. Very likely, yes." Did you so testify?

MR. EVANS: Would you read the next question and answer?

BY MR. BROWN:

Q. Did you so testify?

A. If you have it there, I dare say that I did. I do not think it is clear.

Q. You do not think it is correct?

A. I say, I do not think it is clear.

Q. Will you say definitely whether that spot was put on the chart before or after its construction?

A. I should say that the spot was put on at the 9100 tons for the use of constructing the chart.

Q. That spot was put on in constructing the chart, as I understand it?

A. Yes, and the spot was put at 9100 tons.

Q. And was not put on subsequent to the preparation of the chart?

A. Yes.

Q. You feel quite sure of that?

A. I feel quite sure that that is so.

THE MASTER: There is a difference, as I understand it, between the letters F. R. and the spot referred to?

MR. BROWN: I want to know when the spot was put on the chart.

THE MASTER: When you use the word "spot", you mean the spot and not the letters?

MR. BROWN: In referring to the spot I mean the spot which is enclosed in the circle, which is indicated by the letters F. R.

BY MR. BROWN:

Q. And you so understand, Mr. Brown, do you not, in your testimony, that when I referred to the spot I meant that spot?

A. Well, at that time my recollection—

Q. Won't you answer yes or no, whether that was your understanding in the testimony that you have given, that I am referring to the spot which is enclosed in the circle?

A. You are now referring to the spot that is enclosed in the circle and I so understand at the present time.

Q. And you have so understood in your previous testimony?

A. Well, in the previous testimony there was a lot of talk made in reference to the F. R.'s and S. P.'s and the spots and so forth, and it is quite possible that that may have been confused, but to

have it straight, the spot that you refer to was put on for the purpose of constructing the curve.

Q. And was not put on subsequent to the preparation of the chart?

A. I won't say there was not a tick mark or something of that sort put on subsequent to it.

Q. The spot we are talking about, you say, was not put on subsequent to the preparation of the chart; is that correct? Will you answer that question?

A. Yes, to the best of my belief.

Q. Was that spot to which we have been referring placed on the chart at the same time that the spot was put on the 9100 per ton line for an East Coast tanker?

A. No, that was a development from this line (indicating), and that must have been put on there afterwards.

Q. In other words, you say that the spot which I am indicating, which appears on the East Coast tanker line, on the 9100-ton line, indicating the per ton cost of a 9100-ton East Coast tanker, was put on the chart subsequent to its preparation?

A. No, it was a part of its preparation.

Q. Then it was put on the chart as a part of its preparation?

A. Yes.

Q. Very well. Prior to the preparation of this chart, of course, you had a great many years experience in drawing charts and different graphs used in your engineering work?

A. Yes, sir.

Q. And it is common engineering practice, is it not, in connection with such charts, to enclose im-

portant dots in a circle, and occasionally put a tick at the top of the circle or at one side of the circle?

A. Not necessarily, no.

Q. Is not that common practice?

A. Sometimes it is done, sometimes it is not.

Q. You would not say that it was not common engineering practice, in drawing such charts as this, that when you have an important spot you would earmark it, as it were, by enclosing it in some kind of a circle or with a tick on it?

A. It depends upon what the chart was prepared for and how accurate the chart was supposed to be. But even at that, some people will enclose it with a circle, some will not. Some will put a little tick mark off on the side of it and some will just put a pencil point on, which might be obliterated when the line is drawn through it.

Q. Will you explain what the spots appearing on the East Coast cargo total cost line at the 3000, 7000, 9000, 10,000, 12,000, 14,000, 16,000 and 18,000 per ton lines, which are enclosed in circles, were intended to represent?

A. Yes. Do I have to answer that just absolutely, or can I go back into the preparation?

Q. I would rather you would answer it directly.

A. Do I know what they represent?

Q. Yes.

A. Yes, I do.

Q. What do they represent?

A. They represent the total cost taken from the dead weight curve at those different tonnages.

Q. And why are they enclosed in circles?

A. No specific reason for it.

Q. Did you testify as follows, with respect to those spots that I have mentioned, in the previous

proceeding (p. 222): "Q. Now will you, showing you the original chart Exhibit G-34½, will you explain what the marks or spots enclosed in circles and appearing at the 7000-ton and the 9000-ton and the 10,000-ton and the 12,000-ton lines represent? A. Well, they may have been in connection with the development of this line here or this one (indicating), all through here. I cannot tell you just exactly when those things were put on." Did you so testify?

A. That is probably right.

Q. And in stating that they may have been put on in connection with the development "of this line here," you were referring to the total cost East Coast cargo line, were you not?

A. I presume that is so.

Q. And the explanation which you have just made with respect to those dots, as having been taken from the East Coast cargo line, was not made in the previous proceeding; is that correct? In other words, this is the first time that you have made any such explanation of those spots?

MR. EVANS: He just said so. In the answer that you read he says so, as I understand. He said 'They may have been in connection with the development of this line here or this one (indicating), all through here."

MR. BROWN: We are not speaking of the same thing.

MR. EVANS: I do not know how anybody can tell.

MR. WOOD: What answer are you referring to?

BY MR. BROWN:

Q. We will try it again. I ask you whether this

morning is not the first time that you have testified in this proceeding that the spots to which I have referred, appearing on the East Coast cargo line, were taken from the cost per ton East Coast cargo line?

A. Yes, sir, that is right.

Q. Then there are certain other spots, are there not, on the East Coast cargo line, certain spots which are not enclosed in circles?

A. You can tell as well as I can, Mr. Brown. Yes.

Q. Were those spots likewise plotted in connection with the original development of that line?

A. The original line as put on that chart for the cargo vessels?

MR. BROWN: Will you read the question? I think that is fair.

(Question read).

A. I should say of the line as it now appears upon the chart, yes.

Q. None of those spots indicated on the East Coast cargo line represent the cost of any ships in connection with which Bethlehem was submitting estimates, do they?

A. No.

Q. I ask you if you did not testify as follows before Mr. Roberts at pages 238 and 239 of the testimony: "Q. You cannot give us any reason why that originally—why that East Coast cargo line is apparently a line which was constructed after considerable thought, shown by the character of the line, its heaviness at certain points, as the original base line of the chart? A. Well, it was not the original base line of the chart. Q. It was not the original base line of the chart? A. I am absolutely, definitely

positive of it. Q. But you cannot tell us why the line which you say was the base line for this chart, being the tanker East Coast line, is a thin line which is apparently constructed without any difficulty along the edge of the baton? A. That is quite right. Q. And although the cargo East Coast line was plotted from two points determined from that base line, you cannot tell us why it has the appearance of being a heavily constructed line, constructed after considerable thought and several attempts to reach a proper line? A. Oh, no, I cannot tell you that. Q. Cannot tell us how that happens? A. Oh, no". You so testified?

A. I did.

Q. I think you have already testified, although I am not clear, that the zero point was used as one of the points in constructing your base line on the original chart?

A. Yes, sir.

Q. You have noted, no doubt, the erasures which appear on the chart extending from the lower left hand corner of the chart to the upper right hand corner of the chart, in connection with the total cost work, have you not?

A. You have reference to those lines? (Indicating on positive print)

Q. If you will refer to the other chart (negative print), I think it shows up much more distinctly.

A. You mean those on the upper right hand corner?

Q. Yes.

A. What was the question?

Q. They are the erasures, as I say, which extend from the zero point on the chart parallel, more or less, with the East Coast cargo total cost line all the

way along that line and flaring off into at least five erased lines at the upper right hand corner of the chart. You have noted those lines, have you not?

A. Yes, I have noted them.

Q. And those lines were made and erased by you, were they not?

A. Yes.

Q. Will you tell us what the occasion was for your making those lines which were subsequently erased?

A. My recollection of making the upper lines—and I do not admit they were carried down to the zero point—they were made subsequent to the completion of the chart for the purpose for which it was intended, and it is not definitely clear in my mind why they would be there, because no person of experience in ship costs of any kind or description would ever run a line like that up through there, and it could only have been in discussion with somebody, or, what might happen, if their ideas had been followed in what the relation of the costs might be; but they certainly were not a part of the original chart.

Q. Is that the only explanation you have as to the occasion for putting those lines on and erasing them?

A. That is all that I can think of. There is no other purpose of those lines because they are so far out of line that no man of experience would consider such a thing.

Q. Can you tell us about when those lines were put on and erased?

A. No, I cannot.

BY MR. EVANS:

Q. Are you talking about the lines in the upper right hand corner?

A. Yes, that he is talking about there.

BY MR. BROWN:

Q. No, let us make clear what we are talking about. I think I have already indicated, but I will indicate it again, I am talking about the erased lines which run from the lower left hand corner of the chart, marked zero, more or less paralleling the East Coast cargo lir the entire length of that line throughout its center part, branching off somewhere near the 11,000 or 12,000-ton lines into at least five separate erased lines.

MR. EVANS: You are calling his attention to lines that, as far as I can see, do not exist.

MR. BROWN: I have understood we were talking about those lines.

MR. EVANS: What you say is a line. The witness's answer was directed to some lines that appear there in the upper right hand corner.

MR. BROWN: Mr. Evans, you can get the witness to adopt your theory, if you like.

MR. EVANS: No, I only want the witness to have the privilege of answering the question that he understands and the Master understands.

MR. BROWN: Very well, we will go over it again.

BY MR. BROWN:

Q. Have you not understood, in your testimony which you have just given, that I have been referring to the lines which start at the lower left hand corner of the chart, the erased lines, and run

more or less parallel with the East Coast cargo total cost line throughout its length, branching off at the eleven or twelve thousand ton lines into at least five separate lines which have been erased?

A. But, Mr. Brown, they do not—

Q. Won't you answer that question, whether you understood that?

A. No, I did not. I understood you to have reference to the lines that appear above.

BY MR. EVANS:

Q. In the upper right hand corner?

A. In the upper right hand corner, because those lines do not continue on to the lower part of the chart.

BY MR. BROWN:

Q. Do you say that the lines which I have been referring to do not continue throughout the length of the East Coast cargo total cost line?

A. Yes.

Q. Do you say now that none of these erased lines which appear above the 12,000-ton line were carried along the entire length of the East Coast cargo line?

A. With the possible exception of that line there (indicating).

Q. You indicate the erased line which is nearest to the final East Coast cargo line?

A. Yes; that may possibly have been on there.

Q. You say with the possible exception of that one line, none of these other lines were carried along the length of that East Coast cargo line to the zero point?

A. Yes.

Q. Do you likewise say that there has been but

one preliminary line, as it were, between the zero point and the 11,000-ton line?

A. Only one line.

Q. Only one preliminary line, which was erased by you?

A. No, there may have been others?

Q. There may have been others?

A. Yes.

Q. How many do you think there were?

A. There may have been two.

Q. You think there may have been two?

A. Yes.

Q. In other words, two preliminary lines which were afterwards erased by you?

A. Probably.

Q. And they were connected, were they not, with the erased lines which appear above the eleven or twelve thousand ton lines?

A. No, sir, they had no connection with those lines.

Q. In other words, as I understand it, you think that you probably drew the ends of these erased lines, but did not connect them in the middle; is that correct?

A. Very likely.

Q. At page 230 of your testimony before Mr. Roberts did you not testify as follows with respect to those erased lines: "Q. And can you tell us why there have been erasures at the top of the East Coast cargo total cost line which are barely discernible on the original chart? A. I have a very hazy recollection of that, but they came in some time later, and we had some argument, I think, Mr. Powell and myself, about the probable cost of ships, or the trend of cost of ships, in excess of the 14,000 tons or 12,

000 tons, ships which got beyond the physical capacity of the plant to handle, and my contention was these lines would run in off through here and if not through here (indicating). It was a question of just roughing some lines in through there in a matter of discussion. Q. Now just as a matter of discussion? A. That is what I would say." Did you so testify?

A. Yes, sir.

Q. And that, according to your present recollection, is an explanation of those lines, is it not?

A. About as well as you can give one.

Q. Have you discussed the matter with Mr. Powell since the previous hearing before Mr. Roberts?

A. No.

Q. You have not asked him if that was his recollection about those lines?

A. No.

Q. Why was it that you think that you may have been interested in the probable cost of ships which were beyond the physical capacity of your plants to handle?

A. There was a period after the Armistice when the Shipping Board was considering the construction of very much larger ships than had then been contracted for, in connection with the development of the Merchant Marine.

Q. What was the size of those ships?

A. They were talking, as I remember it, around 18,000-ton ships.

Q. And your chart already ran up to the 20,000-ton figure, did it not?

A. Something of that kind.

Q. What kind of ships were these that you think you may have had in mind?

A. I did not have any ships in mind.

Q. Were they tankers or cargo ships?

A. No, cargo ships.

Q. They were cargo ships?

A. Yes, sir, Mr. Robert Hague, my recollection is, was at the head of that committee that was investigating and recommending.

Q. Mr. Robert who?

A. Hague.

Q. Then, as I understand it, according to the best of your recollection, there was some occasion when you got out this chart in conversation with Mr. Powell and said to Mr. Powell that, according to your ideas, the cost of these ships which were beyond the physical capacity of Bethlehem's plants to handle, would be indicated by a curve which you then proceeded to draw on the chart and erase; is that correct?

A. That I do not want to answer, because the recollection on that thing is extremely hazy. I know there was some talk about it, but I cannot give you anything really definite in the matter.

Q. I am just trying to account for the number of the preliminary lines, Mr. Brown, and I am asking you if it is your recollection that you got this chart out, in the course of conversation with Mr. Powell about these ships that were beyond the capacity of your plants to handle, and said that according to your ideas the probable cost of these ships would be indicated by a line which you then proceeded to draw?

A. I merely say that is a probable situation. I would not say probable; I will change that to a possible situation.

Q. Then, as I understand it, it is possible

that, having so indicated your ideas, you came to the conclusion that probably that line was not correct and then you proceeded to rub it out and draw another line; is that correct?

A. I do not know.

Q. And so on with respect to all five lines; is that correct?

A. I do not know.

Q. Do you think it is probable?

A. I do not know.

Q. Do you remember what part Mr. Powell played in that discussion?

A. I do not.

Q. In fact, you do not remember anything about it?

A. I do not remember about it.

Q. As a matter of fact, you do not remember any such discussion, do you?

A. Not definitely, no, I told you before.

Q. In other words, you could not say whether such a discussion took place or not; is that correct?

A. Yes, sir.

Q. And you heard Mr. Powell say at the last hearing that he had no recollection of any such discussion, did you not?

A. Yes.

Q. And you think Mr. Powell is probably right about that, do you not?

A. I do not know.

Q. Not having any recollection of the discussion, as I understand it, you could not possibly say on what analysis of costs, if any, or on what basis, those preliminary lines were drawn by you, could you?

A. At the top, you have reference to now.

Q. Well, we will say the top lines, yes, the top erased lines.

A. From the indication there, there wasn't any figures made on the thing at all, it was just a rough, freehand sweeping.

Q. No figures at all, and not remembering the discussion you could not say whether you had in mind lump sum prices or half sayings contracts, I suppose?

A. No.

Q. You could not say; is that correct?

A. That is correct.

Q. As a matter of fact, the erased lines to which we have been referring were plotted in connection with your original development of the East Coast cargo total cost line, were they not?

A. The erased lines to which you are now referring at the top?

Q. At the top.

A. No, they were not.

Q. They were not? You are definitely sure of that?

A. That they were not utilized in the preparation of the line that now appears there.

Q. I now ask you if you did not testify to this effect before Mr. Roberts at page 234 of the previous transcript: "Q. And you cannot say definitely that those lines, as I understand it, were put on at the time of your original preparation of the chart or subsequent to it? A. I do not know. Q. You do not know? A. No." Did you so testify?

A. That is right.

Q. And that testimony referred to the erased lines which we have been discussing, did it not?

A. The lines at the top.

Q. The erased lines at the top of the chart?

A. Yes, that is my understanding.

Q. That testimony is correct, is it not?

A. I should say so.

Q. Now will you please note the erasures which run from the lower right hand corner of the chart more or less paralleling the East Coast cargo per ton line, throughout its length, gradually branching off towards the top of the chart into certain preliminary erased lines?

A. I so noticed them.

Q. You see them, do you?

A. Yes, I see them.

Q. Those lines were also put on and erased by you, were they not?

A. Yes, sir.

Q. What was the occasion for making those erased per ton lines?

A. This line extending from here down (indicating the per ton dead weight cargo), approximately running from the 10,000-ton line down, was a development originally of a line—or was a development after the per dead weight ton line of the tankers was indicated. It was taken on a ratio of cost with the tankers at the 15,000-ton, at the 10,000-ton and at the 5000. Now whether they are the particular points I had in mind I am not prepared to say, but I mean to say that it is a continuing increase in difference in cost between the cargo boats and the tankers, the smaller cargo boats having a larger differential than the larger cargo boats. That line was put off in through here (indicating). Then from your experience they ran in some other curves, that line did not appear to be exactly right.

BY MR. EVANS:

Q. You mean now the cost per dead weight ton?

A. The cost per dead weight ton, this line coming off in through here (indicating).

Q. Which is another erased line?

A. Which is another erased line, but I do not think it connects into that line (indicating). I cannot see anything connecting into it, but possibly if it did that may have been another trial point. So that you have then, off in through here, practically a compromise line, which was the final production of that line, the total cost of the cargo vessel. They may originally have drawn off in through here, gotten the point of the differential, the two points, and just run back through there as a rough line to start out with.

BY MR. BROWN:

Q. Without reference to the chart, will you please give us an explanation to clarify just why those preliminary per ton lines were put on the chart, why the preliminary erased lines were plotted on the chart? Please do not refer to the chart. We want to get an explanation that is understandable without necessarily referring to the chart.

A. Yes, because we are taking in round figures on an increase in cost per dead weight ton, or total cost of vessel, as the size decreased.

Q. That is the only explanation as to why those lines were put on the chart?

A. The inside line.

Q. They represented preliminary per ton estimates, did they not?

A. Yes, sir.

Q. For the East Coast cargo ships?

A. Yes, sir.

Q. And they were plotted by you in connection with the original development of that line, were they not?

A. Yes.

Q. At the time you prepared the chart, in other words?

A. Yes.

BY MR. EVANS:

Q. Just to make it clear, you are speaking now of the erased lines on the cost per dead weight ton which appear in the lower right hand corner of the chart?

A. Yes.

Q. You are not referring to the erased lines on the cost per dead weight ton which appear at the upper part of the chart, above 10,000?

A. I was not talking about the total cost, I was talking about the dead weight ton line.

BY MR. BROWN:

Q. Were you not talking about the erased line which runs throughout the length of the East Coast cargo per ton line?

A. No, I am talking about these lines which you referred to.

Q. You were talking about the erased lines, as I understand it, which are below the 10,000-ton line; is that correct?

A. Which I refer to as dead weight tons.

Q. You were talking about the erased per ton lines which appear below the 10,000-ton line?

A. Yes.

Q. And what is your explanation as to why those lines were originally plotted on the chart?

A. We took off the 15,000-ton, drawing upon my recollection, that a cargo vessel of that size would

cost approximately ten pen cent. less than a tanker of equivalent size. We took off the 10,000-ton that it would cost approximately fifteen per cent. less than a tanker of that size. Five thousand tons, we took it at approximately twenty per cent. So from the dead weight line you have got an increasing difference between the tanker and the cargo vessel as your dead weight decreased. That is the way the line was started.

Q. Now what is your explanation for the preliminary erased per ton lines appearing above the 10,000-ton line?

A. As an indication to that line here and that line here you may add one here (indicating), just spotting off on the dead weight line what that would be, but they are absolutely meaningless.

Q. They are absolutely what?

A. They are absolutely meaningless, could not have had anything to do with the development of the chart for useful purposes.

Q. In other words, as I understand you to testify, those preliminary cost per ton lines which were plotted on the chart and erased by you were probably put on to correspond with the preliminary total cost lines which likewise appear above the 11,000-ton line on the chart?

A. Not preliminary.

MR. EVANS: If the Master please, I object to the use of the words "preliminary line." Mr. Brown (the witness) in referring to these particular lines said that they were not preliminary lines and had nothing to do with the preparation of the chart, were put on for an entirely different purpose. It is confusing to

read into the record the words "preliminary line."

MR. BROWN: I have no objection to leaving out the word "preliminary."

(Question read in the following form: "Q. In other words, as I understand you to testify, those cost per ton lines which were plotted on the chart and erased by you were probably put on to correspond with the total cost lines which likewise appear above the 11,000-ton line on the chart?").

A. I do not know whether they correspond with those lines or not.

BY MR. BROWN:

Q. Possibly I did not understand your testimony. I thought that you stated that that was why those erased per ton lines were plotted on the chart, in other words, to correspond with the erased total cost lines that we have been referring to.

A. They show what the general trend of it would be, but I do not know whether if you divide them out they would fit or not.

Q. In other words, you are not sure why those erased per ton lines were plotted on the chart, referring to the erasures above the 10,000-ton line?

A. That is right.

Q. You have really no idea at the present time as to why those lines were ever put on the chart, or as to when they were put on the chart?

A. No, I have not.

Q. Is it not a fact that the only explanation that you can think of at the present time is that those erased per ton lines appearing above the 10,000-ton

line were put on in connection with the original development of the East Coast cargo per ton line?

A. They were not put on in connection with the development of that line.

Q. Now I ask you if you did not testify as follows at the hearing before Mr. Roberts, referring to page 236 of the testimony: "Q. As I understand it, you have no explanation as to why there were three lines drawn as extensions of the cost per ton cargo East Coast line which were subsequently erased? A. Only in the adjustment of the curves when they were originally made. Now you take this—Q. You do not know why those lines—A. No. Q. Were originally put on the chart? A. No, except in the development of it." Did you so testify?

A. I probably did.

Q. And that is correct, is it not?

A. The testimony is probably correct.

Q. Did you not also testify as follows at pages 237 and 238 of the testimony: "Q. In other words, as I understand it, those extensions to the cost per ton cargo East Coast line were probably lines that were put on there in the development of this chart? A. No, they were probably put on there afterwards. Q. They were probably put on there afterwards? A. Yes. Q. Although you cannot remember when they were put on? A. No. Q. Or why they were put on? A. Absolutely not. Q. And you cannot remember, as you cannot remember that, how it is that those three lines which have been put on as extensions to the cost per ton cargo East Coast line happen to coincide exactly with the three extensions of the total cost cargo East Coast line that are nearest to the final cargo East Coast line?

A. Well, that may be. Q. But you cannot tell us how? A. No." You so testified, did you not?

A. I testified that way.

Q. You do not think that those East Coast cargo erasures represented lines that you put on in the course of some conversation that you may have had with Mr. Powell?

MR. EVANS: Which erasures are you referring to, please?

(At the request of Mr. Brown, the question was read.)

BY MR. EVANS:

Q. Do you know what erasures he is talking about? I confess I do not.

A. What I had in mind is the erasures above the 11,000-ton line.

BY MR. BROWN:

Q. Confine your answer to that, then.

A. I stated several times I did not know, but that may be a possible explanation of it.

Q. Did you ever discuss the matter with Mr. Powell to find whether there had been such a conversation?

A. No.

Q. You never took the matter up with him?

A. No.

Q. Either before or after the hearing before Mr. Roberts; is that correct?

A. Correct.

Q. And if there was such a discussion, it has completely escaped your mind, has it not?

A. Yes.

Q. As I understand it, from the time this chart

was originally prepared it has remained in your custody, has it not?

A. Until it was surrendered at the meeting before Mr. Roberts, yes.

Q. That is correct; up until the time of the hearing before Mr. Roberts?

A. Yes.

BY THE MASTER:

Q. Where was the chart between the time that you left the Bethlehem and the time of your re-employment in 1924?

A. In a private file that I had at home.

Q. You had that at your own home?

A. Yes, sir. I might make that a little clearer. These file cases were in a storage warehouse part of the time, but they were still in my possession.

Q. They were not in the control or under the handling of the Bethlehem officers at all?

A. That is right.

BY MR. BROWN:

Q. You say that in preparing the chart, the estimate that you made for an East Coast tanker of 14,950 dead weight tons was $2,736,000, did you not?

A. That is what it works out on the formula I gave, or the figures. That is what I said. If that is the figure, my answer would be yes.

Q. (Showing witness Exhibit G-154). Is that correct, Mr. Brown?

A. Yes.

MR. BROWN: I would like to offer Exhibit previously introduced as Exhibit G-6, which appears at page 578 of the Documentary Evidence, which is a statement furnished to Government counsel by Bethlehem in pursuance of a request

by Government counsel purporting to show general characteristics, dates of keel laying, etc., with respect to various ships delivered during the calendar year 1917.

I offer in evidence a statement furnished by Bethlehem to Government counsel on request, relating to costs with respect to hulls 4158 and 4159, which are the ships referred to in this proceeding as hulls 158 and 159, which was previously offered as Exhibit G-26.

Exhibits offered admitted in evidence and marked respectively Exhibits G-6 and G-26.

MR. BROWN: According to Exhibit G-6, the return cost of material in connection with hulls 158 and 159 was $1,125,024.26, making a total material cost for each of those ships in the amount of $562,512. That is correct, is it not?

MR. WOOD: That seems to be one half the figure you named last.

MR. BROWN: That is right. According to Exhibit G-26, furnished by Bethlehem, the total cost of Job 12 materials for the two ships was $534,402.86, one half of which is approximately $267,000, which represents the cost of Job 12 materials for each of hulls 158 and 159. That is correct, is it not, Mr. Wood?

MR. WOOD: I have not figured it. It is all in the exhibit. It is a matter of mathematics.

BY MR. BROWN:

Q. Deducting the cost of Job 12 materials from the total cost of materials as shown by Exhibit G-6

leaves a balance of $295,512, as representing the cost of the balance of the materials for each of hulls 158 and 159. You have followed that so far, have you not, Mr. Brown?

A. Yes, sir, I have followed it.

Q. According to Exhibit G-6, the return cost of labor for both of these ships was $902,056.91, one half of which, applicable to each of these ships, is $451,000, representing the return cost of labor for each of hulls 158 and 159. You have followed that, have you not, thus far?

A. Yes.

Q. Now I ask you whether, applying the factors which you say you applied with respect to hull 253 in making up this chart, and which you say you likewise applied with respect to hulls 158 and 159, to the cost which we have just explained, and adding an allowance of ten per cent. as you allowed in connection with your explanation, would not your total have been $2,683,619, in round numbers, instead of the $2,736,000 which you say you figured in connection with your preparation of the chart?

A. That would be correct. May I ask the Master a question?

THE MASTER: Yes.

THE WITNESS: I am taking that they have multiplied these things out by the factor and this is the result that they got. I have not multiplied the thing out and checked that figure as being the actual figure. I know that it is going to be less and I know the reason for it.

BY MR. EVANS:

Q. But you are taking their mathematics?

A. Yes.

THE MASTER: The Master understands that the witness, in giving his answer, is not assuming the responsibility for the mathematical calculations, but, assuming the formulas to be used as he understands you are using them, he accepts this result as bringing what you say the result is, and he says that it is less than the other figure and that there is a reason for it.

BY MR. BROWN:

Q. With respect to the spot which appears on your original chart and which is supposed to represent the cost of an East Coast tanker of 14,950 dead weight tons, I ask whether you testified as follows in the previous hearing at pages 512 and 513 of the record: "Q. You do not think it is possible, according to your recollection, that no spot existed on this chart for the 14,950-ton tanker at the time you were in Washington participating in these conferences? Mr. Evans: What conferences do you mean and what chart? The Witness: What chart? By Mr. Brown: Q. On the chart that has been offered in evidence as Exhibit G-34½. A. I don't know. You sometimes may prepare a chart, Mr. Brown, without having a spot at the top point. You put your baton through it and draw around the zero and draw up to it. Mr. Evans: I think the witness was talking about one chart and you were talking about another. By Mr. Brown: Q. What I have been suggesting is the possibility that the spot which now appears on the chart which has been offered in evidence as Exhibit G-34½ at the 14,950-ton line was not on the chart at the time he participated in the Washington conferences in December, 1917. A. Well, just what I explained, plot-

ting a curve off there, you have your figures and you may not even put spots on your chart. Q. So it is quite possible that the spot which now appears at the 14,950-ton line was not on the line at the time you participated in the Washington conferences, more specifically the December 19th conference? A. It may have been and it may not have been." You so testified, did you not?

A. Yes, sir.

Q. And that is correct, is it not?

A. Yes, sir.

Q. You had been all through the negotiations, as I understand it, with the Navy Department Destroyer contracts resulting in the contract of December 6th, 1917, had you not?

A. Yes, sir.

Q. And you had likewise been all through the arrival at the base prices and estimated costs in connection with those contracts, had you not?

A. Yes.

Q. Those negotiations had been conducted by Mr. Powell and yourself on behalf of Bethlehem, had they not?

A. Yes, sir.

Q. And, as I understand it, the Half-Savings form of contract was originated by Mr. Powell in the course of his negotiations with the Navy Department relating to these Destroyer contracts and was adopted by the Navy Department at his suggestion, was it not?

A. Yes, Mr. Powell did suggest that form of contract, to the best of my recollection.

Q. Just to refresh your recollection, he said in the previous trial that that thought came in his mind

on his way to Boston, that he involved the idea of the Half-Savings contract?

A. Yes.

Q. You remember him so testifying?

A. Yes, sir.

Q. It was fully understood by all parties participating in these negotiations relating to the contracts in controversy that the principal purposes and objects of the Half-Savings form of contract proposed to and adopted by the Fleet Corporation were the same as with respect to the Half-Savings form adopted in the Destroyer contracts of December 6th, was it not?

MR. EVANS: Objected to as calling for a conclusion.

THE MASTER: I think that is hardly a proper question for the witness to answer, and it cannot amount to anything if he did answer.

BY MR. BROWN:

Q. Was it understood by you that the principles and purposes of the Half-Savings contract adopted by the Navy were the same in connection with the Destroyer contracts as in the case of the Fleet contracts in controversy?

MR. EVANS: Objected to, because what his understanding may have been is immaterial. The question is what the contracts say.

BY MR. BROWN:

Q. You took part in the negotiations with the Navy Department resulting in the adoption of the Half-Savings form of contract, did you not?

A. Yes, sir.

Q. And the same reasons were advanced by Mr. Powell to the Navy officials in favor of the adoption

of these contracts that were afterwards advanced to the Fleet representatives in connection with the contracts in controversy, were they not?

A. I don't know.

Q. You don't know?

A. No.

Q. Although you participated in the negotiations relating now only to the Destroyer contracts but also to the Fleet contracts?

A. Well there was much of the negotiations of the details of the contracts that were handled directly by Mr. Powell with Mr. Piez and me not being there.

Q. When you say that Mr. Piez participated in the negotiations, are you speaking of something with which you yourself are familiar or something you were told by somebody else?

A. Well I know that Mr. Powell and Mr. Piez had a number of talks in relation to these contracts.

Q. Were you present at these talks?

A. I was not.

Q. Mr. Powell told you that he had had such talks?

A. Why he told me that he had been to see Mr. Piez.

Q. How do you know Mr. Powell had had a number of talks with Mr. Piez relating to these contracts?

A. Because he told me that he had been to see Mr. Piez.

Q. Because Mr. Powell told you so?

A. Yes.

Q. And you participated in the December 19 conference and the January 3rd conference relating to the Fleet contracts, did you not?

A. Yes.

Q. And you know that right up to the time of the final agreement on prices, or at least up to and during the January 3rd conference, that Admiral Bowles was strongly opposed to the Half-Savings form of contract?

A. He was.

Q. And he was insisting upon the adoption of a lump sum form of contract?

A. He was.

Q. And Mr. Powell was arguing very strongly in favor of the Half-Savings form of contract, was he not?

A. I don't recall how much argument was advanced on it but Mr. Powell stood for the Half-Savings form of contract and Mr. Bowles stood for the lump-sum form of contract.

Q. Didn't Mr. Powell explain the advantages to the Fleet Corporation of the adoption of the Half-Savings form of contract?

A. I don't recall the details but it is natural to assume he presented his side of the argument.

Q. Is there any reason for you to suppose that the reasons for the adoption of the Half-Savings form of contract by the Fleet Corporation were different from the reasons advanced to the Navy Officials for the adoption of that form of contract for the Destroyers?

MR. EVANS: Objected to.

THE MASTER: The objection is sustained. If that becomes important it seems to me you ought to have available to testify the persons who were present at the time these negotiations took place.

MR. BROWN: Mr. Brown says he was present.

THE MASTER: I understood he was not. To the extent Mr. Brown was present at these conferences he can relate what each side said in reference to their relative points of view.

BY MR. BROWN:

Q. You were still in Bethlehem's employment at the time of this controversy with the Navy Department relating to the modification of the Destroyer contracts, were you not? Those contracts of December 6th, 1917?

A. Yes, I think I was.

Q. I show you a letter addressed to the Secretary of the Navy by E. G. Grace, President of Bethlehem Shipbuilding Corporation, Limited, under date of June 8th, 1921, offered at the previous proceeding as Exhibit B-5, and ask you if you were consulted by Mr. Grace in connection with the preparation of that letter?

A. I was not.

Q. You are familiar with the letter to which we refer?

A. I am not.

Q. Possibly your answer is a little premature. I show you the letter.

A. No, I could tell you pretty well I don't think that I had anything to do with it. So far as I know I never had anything to do with that letter.

Q. As far as you can recall did Mr. Grace ever consult you with respect to the presentation of Bethlehem's position to the Secretary of the Navy?

A. No, sir.

Q. Did he ever consult you with respect to the

basis of the estimates which you had submitted to the Fleet Corporation?

A. No, sir.

Q. At any time?

A. At any time.

Q. Did Mr. Schwab ever consult you with respect to such estimates?

A. No, sir.

Q. Can you tell the basis, insofar as you know, of the statements made by Mr. Grace in paragraphs 18 and 19 of that letter which has been referred to as Exhibit B-5; in other words, where he obtained the information on the basis of which such statements were made?

A. I don't know.

Q. You would not know?

A. No.

MR. EVANS: He said he did not know.

BY MR. BROWN:

Q. But you are sure that he did not obtain any information from you relating to the subject matter of these paragraphs 18 and 19 which I have shown you?

A. That is right.

Q. Do you remember that Mr. Powell had left Bethlehem's employment about the close of the year 1920?

A. I do.

Q. Will you tell us whether your estimates for the Destroyers included in the contracts of December 6th, 1917, were based upon the actual cost to Bethlehem, of Destroyers which you had previously built at your Fore River plant, corrected as nearly as possible to that date for material and wage in-

creases that had been made since such Destroyers had been completed?

A. We had prepared an estimate.

Q. Is that a correct statement?

A. Substantially so.

Q. Will you tell us whether or not you told Mr. Powell that you thought he was crazy in believing that there would be any savings against the base prices finally agreed upon in connection with the Fleet contracts?

A. My recollection is that I did tell him something of that kind.

BY THE MASTER:

Q. When was that?

A. The time we were preparing the proposals for the Fleet Corporation.

BY MR. BROWN:

Q. In other words, you felt at that time that even by good luck and good management, as I understand it, there was no possible saving against the base prices which were finally agreed upon; is that correct?

A. No, I wouldn't say so.

MR. BROWN: I offer in evidence letter of December 14, 1917, addressed by Powell to the Emergency Fleet Corporation previously offered as Exhibit G-107, which appears at page 216 of the Documentary Evidence.

THE MASTER: There being no objection it is admitted as G-107.

BY MR. BROWN:

Q. That letter, which has been offered in evidence as Exhibit G-107, refers to the Union Stock ships, Hull Nos. 150, 151, 153 and 170, and Spar-

rows Point stock ship Hull 176, and also refers to conferences which took place on December 12th and 13th, 1917, between representatives of the Emergency Fleet Corporation and of the Bethlehem Company on the subject of the completion of these ships?

A. Yes, sir.

Q. Do you remember such conference?

A. In general, yes.

Q. Would you care to see the letter?

A. If you will permit me.

Q. You have had an opportunity to read that letter?

A. Yes, sir.

Q. The Union stock ships referred to in that letter were ships which Bethlehem had started before the requisition of August 1917, were they not?

A. Yes, sir.

Q. And they were being built in a new plant, were they not, called the Alameda Plant, which was a part of the Union Plant in San Francisco?

A. This had been a plant taken over by Union and then extended.

Q. And the extensions were very substantial, were they not, as far as costs were concerned, were they not?

A. Yes, quite.

Q. Now they were built in a labor and material market that had increased the cost of construction at least 50 per cent. beyond the cost of a normal market, would you not say, approximately that, without trying to pin you down, the extensions to the plant?

A. I should say that probably might be so. I don't know.

Q. Well, would you say that the Alameda works

of the Union Plant at which these ships were being built in December of 1917 was a new plant?

A. My recollection is that it was not an entirely new plant.

Q. In other words, it was an old plant, taken over from what company?

A. I don't know.

Q. Then all that Bethlehem did was to make extensions to the plant?

A. Well, I don't know anything about the plant.

Q. As I understand it, with respect to these Union stock ships referred to in the letter of December 14th, Exhibit G-107, Admiral Bowles proposed a lump sum price of $180 per ton, did he not?

A. Yes, sir.

Q. And that price was not acceptable to Bethlehem, as I understand it?

A. That is right.

Q. And that was a lump-sum price which the Admiral offered, was it not?

A. Yes, sir.

Q. What were the reasons given to the Fleet Corporation for the rejection of that lump-sum price of $180 a ton?

A. Well, the conference that I had with Admiral Bowles, when he mentioned to me that he was going to order us to take these ships at $180 a ton, my reply to him was that I felt he was making a big mistake, that you didn't know what they were going to cost; they might cost much more than that or might cost less than that, and then there was some mention about this $205 a ton, and then there was mention about that even at that figure you don't know how you are going to come out; that it would need to be a safe figuring—the materials for the ships had been largely contracted for and delivered, and there

would be no doubt that you could make some profit on it, but Union having made large expenditures at this plant, they expected to get these ships out and get a good profit out of them and help liquidate the expenditures that they made in view of the fact that the Government had taken over the complete output of the plant.

Q. In other words, as I understand it, it was explained to Admiral Bowles that these ships had been undertaken by the Union Company before requisition order of August 3rd, and that all risks due to unforeseen conditions had been assumed by Bethlehem in belief that if the ships could be offered for short delivery they would sell at a price which would net a very large profit, and that conditions indicated that this could have been done had it not been for the requisition order, and you also explained that due to the excessive cost of the extensions to the Alameda works, because they had been constructed in a labor and material market that had very greatly increased the cost of construction, that you thought your lump-sum price at $205 was justified. Was that correct?

A. That was Mr. Powell's thought in the matter, yes.

Q. That was Mr. Powell's thought?

A. Yes, sir.

Q. Well, you agreed to that, did you not?

A. I may have had to agree to it. He may have said that is what he was going to do.

Q. At any rate those were the reasons he gave Admiral Bowles?

A. As expressed in that letter.

Q. For justifying the $205 per ton price?

A. That would be indicated by the letter you have read.

Q. Aside from the letter, isn't that your recollection as to the reasons which were given by Mr. Powell to Admiral Bowles for this price of $205 per dead weight ton?

A. I don't think Mr. Powell ever gave Admiral Bowles any reason, because we had a conference down there, Mr. Powell, Mr. Bowles and myself, and didn't get anywhere with it and we went out and Admiral Harris was there at the time and Admiral Harris took me back to Admiral Bowles and told me we would have to settle the matter, and I told you about what happened between Admiral Bowles and myself, and Mr. Powell probably had this matter up with Admiral Harris or with Mr. Piez.

Q. It is a fact, is it not, that the $180 a ton lump-sum price suggested by Admiral Bowles would have been acceptable to Bethlehem had it not been for the fact that these stock ships had been undertaken by Bethlehem as a speculation and had it not been for the enormous increase in expense in connection with the improvements at the Alameda plant?

A. I don't know.

Q. Mr. Powell consulted you, did he not, with respect to his proposal of December 14th, offered in evidence as Exhibit G-107, which I have shown you, relating to the stock ships?

A. The $205. a ton ships, do you mean?

Q. That is correct, the letter which quotes a price of $205. per dead weight ton?

A. I don't know whether he consulted with me in reference to it or not.

Q. Do you think it is likely that he did or did not?

A. He may have or he may not have. I don't know.

Q. Do you remember whether you had approved that price in connection with the submission of this proposal of December 14th?

A. I had nothing to do with that price.

MR. BROWN: I offer in evidence letter dated December 14, 1917, addressed by Admiral Bowles, to the Bethlehem Shipbuilding Corporation, previously offered as Exhibit G-43.

THE MASTER: If there is no objection it is admitted as Exhibit G-43.

MR. BROWN: I would like to read the letter in question which is as follows:

"The Fleet Corporation has received your letter of December 14th in regard to Hulls Nos. 150, 151, 153 and 170 at the Union Iron Works building for your own account and which were requisitioned by the Fleet Corporation under its order of August third.

The Corporation notes that, having been invited to submit a price for the completion of these vessels in accordance with the original specifications under which you had begun them, you now renew the offer originally made October 26, 1916, to complete these ships at a price of $205. per d. w. ton.

The proposition as originally made was unsatisfactory to the Fleet Corporation and considered to be in excess of the just compensation which the law requires.

You are now informed that the Fleet Corporation has decided to award you, as just compensation and a reasonable price for the completion of these vessels, actual cost plus ten per cent;

with the understanding that the vessels shall meet the full military requirements; that the plans are to be approved by Lloyds and the vessels subject to Lloyds' survey, and also satisfactory to and to pass the inspection of the United States Steamboat Inspection Service for war zone requirements.'"

BY MR. BROWN:

Q. After receipt of that letter do you remember whether you and Mr. Powell together took up the question of the stock ships again with Admiral Bowles?

A. That was December 14th?

Q. In answer to Bethlehem's letter of December 14th?

A. I don't recall anything taken up then until they were finally settled. If there was anything discussed about it it must have been by Mr. Powell. If I had anything to do with it, I have entirely forgotten it.

Q. You don't remember that Mr. Powell ever consulted you after that letter of December 14th, 1917, with respect to the stock ships?

A. I don't see that there would be any occasion for him to consult with me in reference to them.

MR. BROWN: I offer in evidence letter dated December 20, 1917, addressed to J. W. Powell, by Mr. Charles Piez, originally offered as Exhibit G-112, which appears at page 233 of the Documentary evidence.

THE MASTER: If there is no objection it will be admitted as Exhibit G-112.

BY MR. BROWN:

Q. I will ask you to look over that letter which has been offered in evidence as G-112?

A. Yes, sir.

Q. Did Mr. Powell consult you in connection with the preparation of that letter?

A. I believe not.

Q. Did you give him any figures in connection with the breakdown referred to in that letter?

A. No, sir.

Q. And, as far as you know, you have no idea as to how Mr. Powell arrived at that breakdown? I mean you were never advised as to how Mr. Powell arrived at that breakdown?

A. That is my recollection.

Q. And you are quite sure that you were never consulted with respect to it in connection with the submission of this letter?

A. I feel quite confident that is the case, because these stock ships were special consideration and I think all negotiations with the Shipping Board were originally started with Mr. MacGregor of the Union Shipbuilding Company, and Mr. Powell carried them over after the formation of the Bethlehem Shipbuilding Corporation.

Q. It appears from the agreed on figures in this case, as I understand it, that with respect to the four Union Stock ships which were afterwards included in contract 191, that there was an average saving per ship amounting to $672,000. in round numbers, and I now ask you if I am correct in my figures, how, according to your information, that saving was effected by Bethlehem in connection with these ships. Is that question clear?

A. No.

Q. (Previous question repeated.) Can you explain how that saving was effected if I am correct in my figures?

A. No, I can't.

Q. You would have no explanation as to how it would have been possible for Bethlehem to have effected this saving, if my figures are correct?

A. Why, yes, I can give you a general statement on that.

Q. Well I would like to get your explanation, if you have any, as to the manner in which Bethlehem effected this saving averaging $672,000. in round numbers, with respect to each of the four Union stock ships included in contract 191. Would you like to have the question repeated?

A. I think I understand what you are talking about.

Q. (Repeated). I would like to get your explanation, if you have any, as to the manner in which Bethlehem effected this saving averaging $672,000. in round numbers, with respect to each of the four Union stock ships included in contract 191. Will you answer that question.

THE MASTER: The question is how it was and that means if this witness knows.

MR. EVANS: He says he did not and Mr. Brown asked him if he could guess and he said he could guess.

BY MR. BROWN:

Q. What was your answer to my last question?

A. I will have to answer that by saying that I haven't got sufficient information to enable me to tell you just how they made that saving.

Q. So that we may have the matter clear, I am

not asking you whether you can tell us about the saving to the exact dollar, how much saving was effective or why it amounted exactly to $672,672. per ship, but what I am asking you is if you know how a very substantial saving amounting to approximately $672,000. was effected by Bethlehem in connection with these ships?

A. Well, I could tell you probably how such a thing could be, if you wanted, but as far as being applicable to these particular ships I haven't got the information to enable me to do it.

Q. I feel the Master would like you to explain how you could have effected that saving?

A. You might have effected the saving by having purchased your materials at a period when they were very much lower than the replace price of such materials, and that would be quite substantial.

Q. Just on that subject, as I understand, the materials for these ships were actually purchased at a time when the prices were very much lower than the prices current in December 1917; is that correct?

A. I don't know.

Q. So you don't know whether Bethlehem effected any saving with respect to the item of materials; is that correct?

A. That is correct.

Q. And, as a matter of fact, practically all the materials, and certainly the very substantial part of the materials for these ships, had all been purchased by Bethlehem prior to the negotiations in December relating to these ships?

A. Yes, sir.

Q. Now tell us on what other items Bethlehem

could have effected savings with respect to these ships?

A. I don't know.

Q. Well you were going to tell us how it would be possible for them?

A. Well I mentioned your material proposition.

Q. Is that the only one you can think of? There must have been some other way for them to effect this enormous saving of $670,000. per ship in connection with these ships. Can't you think of any other way?

A. Mr. Brown, I think you better get hold of somebody that has handled the work in the yard because my work stopped when I placed the plans in the yard and when I placed the materials requisition with the Purchasing Department. Beyond that I had nothing to do with the situation.

Q. As I understand it, you do not care to suggest to the Master any possible way of which Bethlehem may have effected a saving of $670,000. per ship in connection with these four stock ships; is that correct?

A. That is correct. I don't care to be put in that position.

Q. Possibly I may help you out. Do you think it possible they effected some of this saving with respect to labor?

A. I don't know.

Q. Now what would you say the probability was with respect to a saving against labor?

THE MASTER: Do you think the witness's answer to that is going to be helpful?

MR. EVANS: May I suggest it is all a mat-

ter that can be demonstrated from the actual cost and by comparison with the estimates.

MR. BROWN: It is an extremely interesting, pertinent and important subject.

THE MASTER: The question in my mind is how useful it would be to the record, coming from this witness. Go as far as this witness is going to be helpful to us.

BY MR. BROWN:

Q. Do you think any saving was effected with respect to labor item in connection with these ships in view of your testimony yesterday that the allowance of 30 per cent. for anticipated decrease in efficiency was actually exceeded by Bethlehem's actual experience in connection with these ships?

MR. EVANS: Mr. Brown made no such statement yesterday.

BY MR. BROWN:

Q. May I ask again, according to my understanding you testified yesterday that your allowance of 30 percent. for anticipated decrease in efficiency of labor was actually exceeded in connection with the contract ships as completed; is that correct?

A. I didn't say that. I think I mentioned the division line of the Armistice.

Q. In other words, up to the date of the Armistice you found that the labor cost actually was exceeding your allowance of 30 percent. for anticipated decrease in efficiency?

A. Yes, sir.

Q. But these contract ships were the first ships completed by Bethlehem, were they not?

A. Well there may have been a considerable

amount expended on those ships long before the rise in wages.

Q. Do you take the position that in connection with the stock ships that your anticipated decrease in efficiency in connection with the preparation of the chart amounting to 30 percent., was exceeded or equaled, or don't you know anything about it?

A. I don't know.

Q. But, at any rate, summing the matter up, as I understand it, you cannot explain to us in what manner Bethlehem effected or might have effected any saving in connection with those stock ships; is that correct?

A. I haven't given it any consideration whatsoever and I haven't any information which will enable me to do anything with it.

Q. Is my understanding correct that the first time the Half-Savings contract was discussed with Admiral Bowles was at the conference of January 3, 1918?

A. I don't know.

Q. But you remember at that time, do you not, that Admiral Bowles was insisting on the adoption of the lump-sum form of contract and Mr. Powell was advocating the adoption of the Half-Savings form of contract?

A. That is my recollection.

Q. And you cannot recall any previous occasion on which the Half-Savings form of contract had been discussed with Admiral Bowles, or can you?

A. I cannot.

Q. Admiral Bowles, incidentally, was the representative of the Fleet Corporation with whom you and Mr. Powell did business, was he not?

A. Well Mr. Powell did a lot of business with

Mr. Piez and Mr. Radford, as well as with Admiral Bowles.

Q. You mean Mr. Powell told you that?

A. Yes.

Q. Didn't you testify at the previous proceeding that Admiral Bowles was the man with whom you Bethlehem representatives did business in connection with these contracts?

A. We did business with him and also with Mr. Piez.

Q. Admiral Bowles was the representative of the Fleet who was in active charge of this negotiation with you and Mr. Powell, and, if he was not, who was?

A. Mr. Piez had a lot to do with it.

Q. You never had conferences with Mr. Piez?

A. Mr. Powell had a lot more to do with these contracts than I did.

Q. As far as your personal contact was concerned, it was with Admiral Bowles?

A. That was my contact, with what I had to do with it.

Q. As the principal representative of the Fleet Corporation in connection with the negotiation of these contracts?

A. Yes.

BY THE MASTER:

Q. Was Mr. Radford present at any of the conferences you had with Admiral Bowles?

A. In connection with the contracts, yes, sir.

Q. He acted as Admiral Bowles's assistant, did he not, in these conferences, and he was present and took part in the discussions?

A. Yes, sir.

BY MR. BROWN:

Q. Just to clarify the picture for the Master, the only conferences that you had with representatives of the Fleet, referring to these contracts in controversy, took place on December 12th, December 18th, 1917, and January 3, 1918, did they not?

A. That, I believe, is substantially so.

Q. Mr. Radford was present at the January 3rd, 1918, conference, was he not?

A. Yes, sir.

Q. Can you remember whether he was present on December 18, at your conference at that time?

A. I do not.

Q. At the time of preparing your chart, it was a matter of common knowledge in the shipbuilding business, was it not, that while the price of shapes during 1916 and 1917, until regulation by the War Industry Board, had exceeded the price of plates, and that the reverse was the situation after the fixing of prices for these plates by the War Industry Board?

A. That is correct.

Q. And you testified as follows, did you not, in the previous proceeding, at pages 181 and 182 of the transcript of the proceeding: "Q. Did you know that your estimate with respect to the cost of Job 12 materials for a ship similar to Hull 253 was in excess of $37,000. in excess of what your estimate would have been if you had used a factor to determine the current price of shapes based on the cost of shapes based on the cost of shapes for Hull 253 as compared with the cost of shapes then current in December 1917? A. I did. Q. You knew? A. Yes. Q. That your estimate was that much in

excess? A. Yes. Q. Of what it would have been? A. Yes."

Q. Did you so testify?

A. Yes.

Q. Is that correct?

A. I believe that is the testimony I gave.

Q. As I understand it, in connection with any tank or cargo ship which might have been required by the Fleet, all that was necessary for you to have, in order to submit an estimate, was this chart which you prepared; is that correct?

A. Yes, sir.

Q. So if you had been asked to submit an estimate with respect to, we will say, a 4800 ton cargo ship, East Coast Construction, you would have been able to determine a proper estimate from your chart, would you not?

A. A 4800 ton cargo ship—if the line had been carried down that far, yes. It probably was. I don't know.

Q. And the line was carried down that far, was it not?

A. Yes.

MR. BROWN: I offer in evidence letter dated April 18th, 1918, addressed by H. Brown, Technical Manager, to the United States Shipping Board, previously offered as Exhibit G-132, which appears at page 385 of the Documentary Evidence.

THE MASTER: There being no objection it is admitted as Exhibit G-132.

MR. BROWN: With the Master's permission, I will read only two paragraphs of the

letter, which appear at page 386 of the Concessions: "Moore's 10 tugboats duplicates in all respects to those estimated for with United States Shipping Board Emergency Fleet Corporation, its contract 184. The prices, estimates and conditions of contracts and estimates the same as for the last 14 boats ordered, or as an alternative to the above we can construct and deliver three cargo vessels of about 4800 dead weight tons under the same terms and conditions of contract as entered into for other contract vessels constructed by us with the United States Shipping Board Emergency Fleet Corporation, the prices, however, to be determined after we have had an opportunity to prepare plans and specifications and estimates of cost."

BY MR. BROWN:

Q. As I understand, Fore River Hulls 253 and 254 were duplicates of Hulls previously built at Fore River, Hull Nos. 244 and 245; is that correct?

A. Yes, sir.

Q. And, as I understand it, you previously testified that the material costs shown in this Exhibit G-6, furnished to the Government by Bethlehem, included changes and extras, did you not? Do you recall that testimony?

A. On 253?

Q. In all the ships referred to in G-6.

A. What are they?

Q. (Exhibit shown witness).

A. Yes, sir.

Q. Prior to the regulation of steel prices by the War Industry Board, the prices of steel had been considerably higher, had they not, than after such regulation?

A. Yes, sir.

Cross Examination.

BY MR. EVANS:

Q. You were asked about these stock ships on which Mr. Powell submitted a lump-sum figure of $205. a ton. They were some ships that Bethlehem had started to build in their West Coast yard, not under contract but to sell on the open market; isn't that right?

A. Correct.

Q. And prior to the consolidation of the Bethlehem yards into the Bethlehem Shipbuilding Corporation, a Mr. MacGregor had been the President of the Union Yard, had he not?

A. Yes, sir.

Q. And back in October of 1917, Mr. MacGregor, in answer to a request from Admiral Capps had submitted a price of $205. a ton on those boats, hadn't he?

A. Yes, sir.

MR. BROWN: I do not want to interrupt any more than I can help but Mr. MacGregor's offer was in writing and it was offered as an Exhibit at the last hearing and I don't think that we ought to have Mr. Brown's recollection of what was in that letter, because that is all he knows himself. Mr. MacGregor's offer only related to some of these ships, not to all.

BY MR. EVANS:

Q. I show you a letter which appears at page 149 of the Documentary Evidence, and which was previously offered in evidence as Government Ex-

hibit 96, and I will ask you whether the ships which are referred to in that letter are the stock ships which Mr. Powell referred to in his letter of December 14th?

A. Three out of four.

Q. Is that right, that there were three stock ships referred to in Mr. MacGregor's offer at $205. a ton?

A. Yes.

Q. Whereas Mr. Powell's subsequent offer included a fourth stock ship building at Union or Alameda, and also a similar stock ship which was being built at Sparrow's Point; is that right?

A. Yes, a smaller ship.

Q. A smaller ship at Sparrow's Point?

A. Yes.

Q. You said that at some time during your discussion with Admiral Bowles about these stock ships he offered a lumpsum price of $180. a ton, is that right?

A. Yes.

Q. Was there anything said in connection with that offer regarding wage protection?

A. Yes.

Q. What was that?

A. That offer to be made on the same basis of contracts made with other people with a wage protection.

Q. In other words the price would be increased as wages would increase?

A. Yes, but he also made it general and we did not know it at the time they were making freight allowances, and it was possible it included freight allowances.

Q. But that was not discussed at the time?

A. No, sir.

Q. As I understand it all of these stock ships were subsequently taken on the basis of the Half-Savings form of contract?

A. Yes, sir.

Q. And that was an agreement that you arrived at with Admiral Bowles and Mr. Radford at your conference on January 3rd, 1918; is that correct?

A. That is my recollection of it.

Q. Where did you get the figures which you used in your estimated or base cost of the contract covering those stock ships?

A. That was settled down in the conference of January 3rd with Admiral Bowles.

Q. And where did you get the figure there used as the base or estimated cost of the contract?

A. As I recall the estimated costs were not considered at all. This was a matter of negotiation principally handled by Mr. Powell and Mr. Bowles.

Q. Do you know how the estimated cost compared with the cost as it appeared on your chart?

A. They show about what is on the chart.

Q. In other words the estimated or base cost as finally agreed upon for these stock ships was approximately the cost as it would have been if you had taken it from your chart; isn't that right?

A. Yes, sir.

Q. Can you tell us how the cost of these stock ships to the Fleet Corporation, if you had accepted Admiral Bowles offer to build them at $180. a ton lump-sum, with wage protection, how the total cost would have compared to the price which Bethlehem is now asking under its contract, including the cost plus the fixed fee, plus Bethlehem's one-half of the savings?

A. The price that Bethlehem is asking to be paid for the vessels is approximately $184. a ton.

Q. When you say what Bethlehem is asking, that includes cost, fee and one-half of the savings?

A. Yes, sir.

Q. In other words what they claim under their contract?

A. Yes, sir.

Q. That runs about $184. a ton?

A. Yes, sir.

Q. Now have you figured out how much those vessels would have cost the Fleet Corporation if they had been built on a lump-sum contract at $180. a ton with wage protection?

A. Yes, sir.

Q. How much?

A. $192. a ton, approximately.

Q. In other words they would have cost about $8.00 a ton more, would they?

A. Yes, sir.

Q. And by the same logic, Bethlehem's profit would have been $8.00 a ton more than what they are now asking under the contract?

A. Yes, sir.

Q. Mr. Brown asked you some questions about this chart and read you some of your testimony which you gave before Mr. Roberts at the time of the previous hearing. I call your attention to the testimony which appears at page 237 there, referring to the extensions of the cost per ton cargo on the East Coast, you testified as follows:

"Q. (By Mr. Brown). In other words, as I understand it, these extensions to the cost per ton cargo East Coast lines were probably lines that were put on there in the development of this chart? A.

No they were probably put on there afterwards. Q. They were probably put on there afterwards? A. Yes. Q. Although you cannot say when they were put on? A. No. Q. Why they were put on? A. Absolutely." Do you recall so testifying?

A. Yes, sir.

Q. And is that in accordance with your best recollection?

A. Yes, sir.

Q. Were the erased lines which appear to branch off from the cost per ton of the East Coast cargoes above the 12000 ton line, put on that chart in connection with the development of your estimates for the contracts with the Fleet Corporation?

A. No, sir.

Q. Did they have anything to do with your estimates?

A. No, sir.

Q. Were the erased lines which branch off apparently from the East Coast cargo total cost line about above the 10,000 tons, put on there in connection with the development of that chart for the purpose of arriving at estimates of cost for these contracts with the Fleet Corporation?

A. No, sir.

Q. Did they have anything to do with your estimates of costs under those contracts?

A. No, sir.

Q. In point of fact, what is the largest cargo boat that Bethlehem built for the Fleet Corporation on the east coast?

A. 7400 tons.

Q. And where were they built?

A. At Sparrow's point, and Harlan Plant.

Q. You did not build any cargo boats for the

Fleet Corporation on the East Coast of 12,000 tons or over?

A. No, sir.

Q. Did you build any cargo boats on either the East or the West Coast over 12,000 tons for the Fleet Corporation?

A. Contracted for two, I think it was 12,000 tons.

Q. That was on the West Coast?

A. I mean on the West Coast. That is what you mentioned, wasn't it?

Q. When was that contract? It was not the original contract? It was not part of the original proposal of 1917, was it?

A. No, sir.

THE MASTER: We are not concerned with those two 12,000 ton boats he has referred to here at all, are we?

THE WITNESS: They were contracted for. They were Hulls 215 and 216.

BY MR. EVANS:

Q. But those contracts were cancelled subsequently, were they not?

A. I think there were two stock ships, 12,000 and 11,800 tons, I think you will find.

THE MASTER: No. 170 was a 12,000 ton boat. That was why I was inquiring about that. That is not one of the two you just referred to that were on the West Coast.

BY THE MASTER:

Q. That stock ship was on the East Coast, wasn't it?

A. No, sir, that was on the West Coast.

Q. Is that one of the two you were referring to?

A. No.

Q. There were two in addition to that?

A. Two in addition to that. That is my recollection. They were 12,000 or close to it. They may have been 11,800.

BY MR. EVANS:

Q. You were also asked by Mr. Brown regarding this spot on the East Coast tanker total cost line which appears as 9100 tons and has opposite the letters "F.R." Mr. Brown asked you whether you did not testify at the last hearing that that spot was not put on your chart until after it was completed. I call your attention to your testimony given before Mr. Roberts, which appears at page 209. You testified as follows, did you not: "Q. (By Mr. Brown). You say that was put on before? A. The contracts, yes. Q. Now, according to the best of your recollection that spot for Fore River the 9100 tanker East line was put on before the contract with Fore River was entered into? A. I should say yes."

Q. Did you so testify before?

A. Yes.

Q. And is that your recollection that the spot which appears at 9100 tons of the East Coast tanker total cost line was put there before the contracts were made?

A. Yes, sir.

Q. And was it put there probably in connection with the development of your graph?

A. Yes, sir.

Q. You were asked at the last hearing before Mr. Roberts a great many questions about the appearance of the chart.

A. Yes, sir.

Q. And one of the questions which you were ask-

ed, and I think Mr. Brown read the question and your answer to it again today, was whether you could explain what appears to be a fact that there are certain erasures in connection with the East Coast Cargo line which are apparent at least at a point below, we will say, 7,000 tons, and that there are also certain erasures which appear near the East Coast cost per ton cargo line which are apparent running up perhaps to 10,000 tons. You were asked about these erasures at the last hearing, were you not?

A. My recollection was that they were—

Q. I am asking you whether you were asked about these erasures at the last hearing?

A. I think so.

Q. Now I call your attention to the testimony that you gave before Mr. Roberts, which appears at page 235. Your attention was directed to these erasures and your testimony was as follows: "Here is what he is talking about. You have got a line all in through here (indicating). You had some indications of over here, probably started curves, I don't know what it is, and this line here, this line developed along here, you will find there is a line probably appearing off in that manner. Now it didn't look quite the way it ought to so you may have had this curve cost per ton dead weight erased the original proposition you had in here in order to get in your opinion what will be the proper cost per ton dead weight line, then you took this line here (indicating) and you also probably used that. I think you will find there is a line come along in here again on this (indicating) or you may have arrived at what your differential actually would have been, and you will find this line here (indicating) is also

somewhat modified as a compromise between these lines again." Now I confess that as that got down on the record it is not very intelligible to me and I don't believe it is very intelligible to the Master and I am afraid that the explanation that you made this morning, when it gets down in black and white, will not be any more intelligible. You refer there to a differential. What is the differential?

A. In percentage of cost between the tanker and the cargo value.

Q. So that in the testimony which I have just read to you, talking about the change which has apparently been made in the cost per ton of the East Coast cargo boats, is that right?

A. As related to the tanker.

Q. Now without going over that testimony again and trying to make that clear, will you state again what it was that you attempted to state as the stenographer got it down there in the last hearing as to the explanation for those erased lines on the cost per ton and the relation if there is any relation, between those erasures, and the erasures that also appear on the total cost line of the East Coast cargo boats?

A. After having adopted the tanker East Coast line both as to total cost and per ton dead weight, in order to establish the line for the cargo boats I used a ratio difference between the cost of the tanker and what would be the cost of an equal sized dead weight cargo vessel. That varied from the largest ship to the smallest ship, increasing in the amount of ratio on the smallest ship. I started out on a 15,000 ton boat, as I recall it, at approximately 10 per cent. On a 10,000 ton boat you will find it is 15 per cent., and on a 5,000 ton boat on this erased

line here in relation to the tanker, you will find it is 20 per cent.

Q. Just let me interrupt you. If you had carried the proportionate differential right straight through it would have been 20 percent. of that point, wouldn't it?

A. Yes, sir. Then it would mean at 12,500 tons it would be 12½ per cent, and at 7,500 tons it would be 17½ percent. After having developed this curve as sketched around in there.

Q. You mean now your original—

A. Having developed the cost per ton dead weight for the cargo boat with the relation of the cost per ton per dead weight for the tankers, this was sketched around through here, may have been roughly taken off and your points plotted on to your total cost. Now your total cost don't mean so much to you in relation to one ship to the other as your cost per ton dead weight means and you are more familiar with the character of curve because your total cost is practically a straight line running down around 7,000 tons, maybe up to 12,000 or thereabouts, and that can vary $10,000. on your line here without giving you an appreciable difference in your curve, whereas on your curve of cost per ton dead weight your division is $1.00.

Q. Whereas on your total cost each division is how much?

A. On your total cost it is $10,000. This gives you a better idea. Now after having that in that curve, for some reason or other which I have not got the information on at the time, it looks as though it would have to be changed some—

Q. What do you mean, the East Coast line?

A. Below the 10,000 line that the curve looked

probably for a cargo boat as being what you might term for being too flat, would produce vessels of a higher cost, and that then was changed. Now you might be running a curve around here and you might have started just across for a short distance, and taken spots off to the line of total cost.

MR. EVANS: I think we are getting as bad as we were before Mr. Roberts.

THE MASTER: We will let Mr. Brown look at the chart and the lines and get the lines clearly in his mind and after we come back from lunch get this thing so it means more.

(Recess from 1 o'clock to 2 o'clock P. M.)

2:00 p. m.

HARRY BROWN, resumed.

BY MR. EVANS:

Q. Before lunch or recess you were explaining to us the relation between the erased lines on the cost per ton line and the erasures which appear on the total cost of the East Coast cargo boats below 10,000 tons. Will you continue your explanation? You told us before luncheon that, as you originally constructed your cost per ton line, that was figured on a differential from your cost per ton line for East Coast tankers?

A. Yes.

Q. And I think that is about as far as you had gotten. Now will you resume your explanation from that point?

A. There is an erasure extending from the $245 per ton line to the $200 per ton line on the cost per ton dead weight of the East Coast cargo boats. It is quite probable that the line, not terminating tangentially to any other part of that curve, may merely have been put in as a test line for vessels of from one to three thousand tons. It is quite possible that that was transferred to your total cost line. A further erasure was made on the total cost line after the final determination of what appeared to be acceptable as the cost per ton dead weight line. I think that covers the erasures.

Q. You testified at the last hearing, I think, that your base line was your East Coast tanker line; is that correct?

A. Yes, sir.

Q. And does that apply both as to the line representing total cost and the line representing cost per dead weight ton?

A. Yes, sir.

Q. They were the base lines in each case?

A. Yes, sir.

Q. You also testified, as I recall it, that after you had plotted that base line you plotted the total cost line for the East Coast cargo boats by taking off points representing the differentials that you originally allowed, 15 per cent. at 10,000 tons and 10 per cent. at 15,000 tons; is that correct? I mean am I correct that that was your testimony before?

A. I believe it was.

Q. And I think you then said that, having gotten those points representing the differentials between the two lines at those two points, you probably took a baton and drew in a line representing the total cost of cargoes to be built on the East Coast, or that you may have drawn it in rough hand. Is that your testimony?

A. Yes, sir.

MR. BROWN: At this proceeding or at the former hearing?

MR. EVANS: At the hearing before Mr. Roberts, I am talking about.

MR. BROWN: Not at this proceeding?

MR. EVANS: No.

MR. BROWN: There was nothing said about rough hand at this proceeding.

MR. EVANS: No, nothing said about that so far as I recollect.

BY MR. EVANS:

Q. Do those spots which appear on the East Coast Cargo total cost lines, 3,000, 5,000, 7,000, 9,000, 10,000, 12,000, 14,000, 16,000 and 18,000 tons—do those spots bear any relation to the cost per ton line for cargoes on the East Coast?

A. Those spots are the price per ton line multiplied by the total dead weight, which gives the total cost of the vessel.

Q. In other words, there must be a definite relation between the two lines?

A. Yes, sir.

Q. Do those spots indicate to your mind how the total cost line, as it was finally developed and appears on that chart, was developed with relation to the cost per ton line?

A. Yes, sir.

Q. What do they indicate?

A. They indicate that you took the cost per ton, multiplied it out by the tons dead weight, plotted the total cost, and it is quite possible that you took a triangle or straight edge that you might have had at the time and just drew between the spots and discarded the original line, or it may have covered the original line, or you may not have had that line there at the time at all after you determined the cost per dead weight ton to your satisfaction.

Q. In other words, if I understand your answer correctly, it indicates to you now that your final total cost line for East Coast cargo boats was developed from your cost per ton line; is that right?

A. Yes, sir.

Q. Although originally, as you said before in the

previous hearing, it was probably drawn in with a baton to go through the two points representing your differentials?

A. It is quite likely that there was a line in there before you drew your cost per ton dead weight line in by means of a baton.

Q. If you changed your curve representing your cost per dead weight ton, that would require a corresponding change in the total cost line, would it not?

A. Yes, sir.

Q. But the difference in point of number of squares on the total cost line would be very much less than the difference in number of squares on your cost per dead weight ton lines, would it not?

A. That depends upon the tonnage.

Q. I mean below 10,000 tons?

A. Yes, sir.

Q. Does that indicate to you, apart from any definite recollection you may have of the matter, whether the East Coast cargo line was used as the base line from which the other lines were developed, or whether one of the other lines was used as the base line from which the East Coast cargo lines were developed?

A. The East Coast cargo line was developed from the tanker line.

Q. That is your recollection, as I understand it?

A. Yes.

Q. But does the appearance of the chart either confirm or contradict that?

A. The chart confirms it.

Q. Why?

A. Well, the relation of one size of boat to another is more uniform on a tanker than it is on a

cargo boat. The natural thing for you to take in trying to develop an approximation, especially where you were trying to get some curves within a probable range of cost, we had no amount of cargo tonnage on which we could base an estimate—

Q. I do not think you are answering my question.

A. Possibly not.

Q. Maybe you did not understand it. I did not ask you why you used tankers as your base line, but I am asking you whether the appearance of the chart, particularly those erasures to which I have just directed your attention, either confirms or contradicts your independent recollection that it was the tanker line East Coast which was the base line from which the others were derived?

A. It would indicate to me, Sir, that if I developed the cargo line first, the probability is that the tanker cost per ton dead weight would be a somewhat different line from what is there.

Q. Why?

A. Because I think I would have had it dropping more, unless I had information which confirmed this line here from actual figures.

Q. "This line" being what?

A. This line being the cost per dead weight ton of the East Coast tankers,— that that made a definite line, and the relation I took of those things being constant, you will find that these relations below this point here—

Q. You mean relations between tanker cost and cargo boat cost?

A. Relations between tanker cost and cargo boat cost, are not in the same relation as they are above the 10,000 tons.

Q. In other words, you have not carried your differential through?

A. That is right.

Q. In the same proportion?

A. In the same proportion. If it was carried on this original line it would be in the same proportion.

Q. Why does that indicate to you that it was the tanker line that was used as the base and not the cargo line?

A. I thought I made that clear. If I had used the cargo line and not had any tanker line at all and I had developed this line here, the probability is that I would have taken that ratio that I took before, which was simply round figures, and drawn the tanker line down there and let it go at that and accepted that as what it would be.

Q. Your answer is not quite clear to me, and I doubt if it is to the Master. Does the fact that the erasures which appear on that chart are in connection with the development of the cargo line, and that there are apparently no erasures in connection with the tanker line, indicate to your mind anything as to which line was developed first, or which line was the base line, and if so what? Let me put it this way. Suppose the East Coast cargo cost per ton line had been your base line. Now as originally drawn, that would show a differential in direct proportion to the size of the boat, or in inverse proportion to the size of the boat, would it not?

A. Yes, sir.

Q. And if you had drawn that line that way and then had constructed your tanker line based on that differential, and subsequently had concluded that your cargo line was wrong, would you or would you

not have been obliged to make a change in your tanker line?

A. If I would have held the same ratio of difference, yes, sir.

Q. In other words, if you had drawn your cargo line first and had put in your tanker line by allowance of the differential, which is what you originally contemplated and intended to use, that tanker line would have been out of position?

A. Yes, sir.

Q. And would have had to be subsequently corrected?

A. Yes, sir.

Q. So that, in that event, it would be the tanker line which would have showed the erasure and not the cargo line?

A. Yes, sir.

Q. Now when you say that the tanker line was, in fact, the base line from which other lines were developed, are you stating that because you recall it, or because that is your assumption from looking at the chart?

A. No, it is because I recall it and it would be the perfectly natural thing to do.

Q. Do you definitely recall it?

A. Yes, sir.

Q. Do you have any definite recollection regarding these erasures about which I have just asked you, or is your explanation an attempt to give us a possible explanation, which to you seems plausible? I mean do you recall definitely that you did erase those lines and why you erased them?

A. No.

Q. Then am I correct in saying that the explanation that you have given is an explanation which, as

you look at the chart, seems to you to be a probable explanation of something about which you have no definite recollection?

A. That is right.

Q. That is correct?

A. Yes, sir.

Q. Can you think of any other plausible explanation of the appearance of that chart?

A. No, sir.

Q. You have told us that when you went to Washington on December 18th and met Mr. Powell, you reconstructed a graph?

A. Yes, sir.

Q. And you said that you did that by taking a spot representing the cost of a 10,000-ton tanker to be built on the East Coast?

A. Yes, sir.

Q. Where did you get that spot?

A. Got that spot from the original chart.

Q. How did you get it from the original chart?

A. From memory.

Q. What was the spot?

A. $200 a ton, or $2,000,000 for a 10,000-ton ship.

Q. Did you just happen to remember that?

A. I may have remembered some other points, too, but that was—

Q. No, why did you pick 10,000 tons exactly?

A. Because that is a very easy thing to remember, to carry at any time.

Q. Well, more than that, your 10,000-ton line is the line at which all of your total cost lines and your cost per ton lines cross, is it not?

A. Naturally.

Q. And it happened that on your chart as you had developed it in Bethlehem, the cost of a 10,000-

ton tanker hit exactly $200 a ton, or a total cost of $2,000,000; is that right?

A. Yes, sir.

Q. And that was an easy figure to remember?

A. Yes, sir.

Q. And one that you did remember, so that when you say you reconstructed the chart in Washington, you do not mean to say, as I understand it, that you developed factors in Washington and did over again, or attempted to do over again, the work that you had already done in Bethlehem?

A. That is right.

Q. You did not do that?

A. No.

Q. What you did was to reconstruct from memory a copy of the chart, or part of the chart, which you had in Bethlehem; is that right?

A. Yes, sir.

Q. And you were helped to do that by the fact that you had one spot on that chart definitely fixed?

A. Yes, sir.

Q. And that was the cost of a 10,000-ton tanker?

A. Yes, sir.

Q. And it was on 10,000-ton tankers particularly that you were asked to estimate, was it not?

A. Yes, sir.

Q. By the way, there were no boats over 10,000 or 10,100 tons included in the original estimate, were there—no tankers?

A. No tankers.

Q. And no other boats? There were no boats in the original estimate of December 19th in excess of 10,100 tons, were there?

A. You have the letter there.

Q. Just look at that letter, which is Exhibit G-

109, and see if I am not right in saying that your proposal did not include any vessels over 10,100 tons—well, except the troop ships, but there was no estimate of cost on the troop ships?

A. No. There is none over 10,100 tons except the troop ships.

Q. I notice that in this letter Mr. Powell says, "The figures quoted above for the smaller tank vessels are based upon those given for the 10,000-ton vessel." Is that in accordance with your recollection?

A. Yes, sir.

Q. That your estimates were based on your figure of $200 a ton, or $2,000,000 for a 10,000-ton tanker to be built on the East Coast?

A. Yes, sir.

Q. And that was the figure that you had developed in connection with the preparation of your chart which you had in Bethlehem?

A. Yes, sir.

Q. And you got your cost for the West Coast tankers by adding five per cent.?

A. Yes, sir.

Q. And in order to get your cost for the 7500-ton tankers and the 7400-ton cargo boats, which were also included in that proposal, as I understand it, you drew a curve which, in your experience, represented the approximate drift of the curve to represent the cost of vessels of less than 10,000 tons; is that right?

A. Or as near as the line or curve that was produced on the original chart.

Q. And that would be something deviating slightly from a straight line, would it not?

A. Yes, sir.

Q. How did you know how to draw that line? I mean if you had drawn that line from your 10,000 point directly to zero, would you have gotten an approximate cost of boats under 10,000 tons, say at 7500?

A. No, sir, they would all have been the same per dead weight ton.

Q. And that would have been wrong?

A. Yes, sir.

Q. How did you know how much of an allowance or drift to make in that curve in order to represent a proper differential in the cost of vessels under 10,000 tons? Did you have any figures to go by?

A. I do not recall just whether I had any spot on the thing or not, or whether I recalled the intersection from that 10,000 to the base line, or approximately what it was, or just how I got it.

Q. Was it a new thing for you to be estimating costs by the use of such curves?

A. No, sir.

Q. You had been in the habit of doing that, had you?

A. Yes, sir.

Q. And were you familiar, in a general way, with what the drift of the line should be below 10,000 tons?

A. Yes, sir.

Q. Was it your experience, then, and familiarity with that method of reflecting costs that enabled you to draw in a line which would approximately represent the cost of boats under 10,000 tons, assuming that you had a spot representing the cost of a 10,000-ton boat?

A. Yes, sir.

Q. You would not pretend to say that that was accurate to the dollar, would you?

A. No.

Q. How accurate would you think it was in terms of percentage?

A. It would be within one and a half to two per cent.

Q. You think, from your experience and familiarity with the use of this kind of a graph, that you could hit it within one and a half or two per cent.?

A. Yes, sir.

Q. Now Mr. Brown asked you some questions yesterday insinuating that your testimony as to the reconstruction of that chart in Washington was an after thought, which you had never thought of, or at least had never discussed with Bethlehem counsel, until after you had testified on behalf of the Government in the proceeding before Mr. Roberts. Is there any basis whatever for that insinuation?

MR. BROWN: May I deny on the record that my questions had any such insinuation, and in explanation of that I might say that I thought Mr. Brown probably had the second chart very well in mind, but that I do say that I made the express statement that I do not think he had discussed it with anybody in connection with Bethlehem until after the May hearings before Mr. Roberts.

BY MR. EVANS:

Q. Then I will accept Mr. Brown's explanation of the purport of his questions, and I will ask you whether there is any basis for his last statement, that you had never discussed this reconstructed chart and the circumstances and manner in which it was made with Bethlehem counsel until after your

testimony given on behalf of the Government in the proceeding before Mr. Roberts?

MR. BROWN: Other than Mr. Moore, I should have added to my explanation.

A. There isn't anything in it. I think I told you yesterday in the testimony that it had been with Mr. Moore and I did not recall to just what extent it had been with the others.

BY MR. EVANS:

Q. You said yesterday that when you originally were employed, I think in 1924, to take up this case, that it was Mr. Moore who was taking the active part and with whom you were having your discussions?

A. Yes, sir.

Q. And I think you said, while you thought it was quite likely, that you could not state definitely that you had ever discussed the making of that reconstructed chart with either Mr. Wood or Mr. Robison or myself. Now I want to refresh your recollection about that, Mr. Brown. There is no doubt whatever that you discussed that with Mr. Wood, is there?

A. I discussed so many things with Mr. Wood that I cannot exactly say.

Q. Then let me refresh your recollection. You remember talking to me about this case on several occasions too, do you not?

A. Yes.

Q. Do you remember one occasion, which was probably a matter of weeks or perhaps months, several months, before the hearing before Mr. Roberts, when I met you and Mr. Powell in Mr. Wood's office in New York?

A. Yes, sir.

Q. That was the first time that you and Mr. Powell and I had met together, according to my recollection; is that correct?

A. Yes, sir.

Q. Is that in accordance with yours?

A. Yes, sir.

Q. And at that time do you recall that we went over with you and Mr. Powell the letter or proposal of December 19th and how it was made up?

A. Yes, sir.

Q. And that, in connection with our discussion of that phase of the case, you told us all about having gone to Washington without your original chart and having reconstructed a chart there in Washington, exactly as you testified here yesterday?

A. We said a good deal in connection with charts there at the time.

Q. Have you any doubt that you told me at that time, or told all of us who were there, exactly everything about this reconstruction of the chart?

A. I do not want to say that, Mr. Evans. I do not recall.

Q. Don't you recall that there was some question about the cost, or the estimated cost, of the 7400-ton cargo boats?

A. Yes.

Q. And that in connection with that you explained that you did not have any definite figure for a 7400-ton cargo boat in Washington at the time you made your estimate, and that it might be that your line was a little high or a little low on your reconstructed graph compared to what it was on your original graph? Don't you remember that?

A. Yes, I do.

Q. Now that I have refreshed your recollection,

can you not say positively that on that occasion, at least, which was in advance of any hearings before Mr. Roberts, you did discuss with us and tell us all about the reconstruction of that chart?

A. Yes.

Q. Is that right?

A. I can recall that, yes, sir.

MR. BROWN: What is that date?

MR. EVANS: I cannot fix the date. It was in advance of the hearings before Mr. Roberts?

THE WITNESS: Yes, sir.

MR. BROWN: Can we not have the approximate date?

BY MR. EVANS:

Q. Mr. Brown, my recollection is it was some time after a date had been tentatively set for the hearing before Mr. Roberts; is that correct?

A I should think that would be, yes.

Q. That would probably fix it somewhere in March or April of 1929. I am not holding you down to a definite date, but is that your recollection?

A. It would be somewhere around that, I should think, because I had not met you until shortly before the trial, a couple of months.

Q. It was a conference that we had in anticipation of the hearings before Mr. Roberts, was it not?

A. Yes, sir.

Q. Now at that meeting Mr. Powell was present, as you said?

A. Yes, sir.

Q. And do you recall whether Mr. Robison and Mr. Wood were also there?

A. Yes, sir.

Q. They were?

A. Yes, sir.

Q. It was in Mr. Wood's office, was it not, over in New York?

A. Yes, sir.

Q. You have already said that in the first statement that you gave to Mr. Moore you also told him about the reconstruction of that graph in Washington?

A. Yes, sir.

Q. Exactly as you told us here yesterday, or substantially?

A. That is correct.

Q. And don't you recall that when Mr. Wood got into the case, in expectation that he would take charge of the trial, that was one of the first things you told him?

A. That is very probably so.

Q. You have no definite recollection on it?

A. I know there was a talk with Mr. Wood about curves and so-and-so, but he did not welcome the idea very much about curves.

Q. And I think I made some remarks about curves too?

A. Yes, you made some nasty remarks about curves.

MR. EVANS: That is not for the record.

MR. BROWN: May we have on the record the remark about Mr. Wood not welcoming the idea of curves? That is very interesting.

BY MR. EVANS:

Q. Mr. Brown is disposed to make something of that answer. Will you explain what you meant by that? What did you mean when you said Mr. Wood did not like the idea of curves?

A. He was not accustomed to looking at curves and he wanted it more in the nature of a tabulation or figures.

Q. In other words, he could not read those curves as readily as you thought he ought to be able to?

A. Yes, he could not understand them and he took exception to them.

Q. That is what you meant when you said he did not like curves?

A. That is right.

Q. And I told you I thought you plotted your daily life by curves, did I not?

A. Yes, sir.

Q. Mr. Brown also asked you whether it was not a fact that it was not until you were recalled as a witness on behalf of Bethlehem in the proceedings before Mr. Roberts that you first made any reference to this reconstructed chart, and that is a fact, as I understand it?

A. Yes, sir.

Q. Now is it not also a fact that in the hearings before Mr. Roberts you were called as a witness on behalf of the Government?

A. Yes, sir.

Q. And your examination was confined to your qualification and experience as an expert and your explanation of how your original graph was made up; is not that right?

A. Yes, sir.

Q. You were not asked any questions by Government counsel as to what transpired in Washington, either on December 12th, on December 14th, on December 18th, or any other time, were you?

A. To my recollection, I was not.

Q. You were not asked any questions about the submission of the proposal?

A. No, sir.

Q. Or how the proposal which was contained in Powell's letter of December 19th was arrived at, were you?

A. No.

Q. And it was not until you were recalled by Bethlehem that that phase of the case was gone into, was it?

MR. BROWN: Oh, Mr. Evans, what a statement.

THE MASTER: That is not a statement, that is a question of the witness.

MR. BROWN: You must forget. I am sure you do not want Mr. Mason to have that impression.

BY MR. EVANS:

Q. Is that right, Mr. Brown?

MR. (JOSEPH) BROWN: Of course it isn't. Go ahead.

BY MR. EVANS:

Q. Is that your recollection?

MR. BROWN: There was full and complete examination both by you and by us in advance of the June 10th hearings with respect to the chart.

A. I think it was on the examination by Bethlehem that that was developed.

BY MR. EVANS:

Q. Yes, and that was the first time any question was asked of you about the things that were done in Washington in connection with the making up of the

proposals which are contained in the letter of December 19th?

A. That is my recollection.

MR. BROWN: There was a complete examination in reference to this original chart and its basis, both by Government counsel and by you, in advance of the hearing of June 10th.

THE MASTER: That is what Mr. Evans said.

MR. BROWN: There was a complete examination with respect to it, the basis of its preparation, the basis of the proposals submitted to the Fleet Corporation, the statement by Mr. Brown that this chart, the first chart, was the entire basis, was the basis of all the proposals submitted to the Fleet, and not one word said to us or to anyone else at that hearing of the second chart, until he was recalled on June 22, 1929. If I have to offer the record to prove that, I am prepared to do so.

MR. EVANS: I have no objection to your offering the record. My statement still holds.

BY MR. EVANS:

Q. I direct your attention to a statement you did make on your first examination, in answer to a question by Government counsel, which appears at page 211 or beginning at the bottom of page 210: "A. The whole thing was developed around the tanker proposition. It seems perfectly natural for me to take that same thing and spot along there and say we are going to build those ships at this place and this is the point and Sparrows Point plant, 10,100 tons, here is what we are going to take, and mark it. Whether I did while we were in Washington

or at Bethlehem I don't know. I don't think I had that curve in Washington." That was a statement that you made in answer to Mr. Brown's question on your original examination, did you not?

A. Yes, sir.

Q. On page 211; so that you told Mr. Brown in your first examination that you did not have your original chart with you in Washington, did you not?

A. Yes, sir.

Q. Did he ask you any more questions about that?

A. I don't remember.

Q. You also made a statement to Mr. Brown to the effect that you had never told Bethlehem counsel that you had your working papers which you had used in connection with the preparation of your original estimates of cost. What did you mean by that?

A. That the papers were never kept.

Q. You mean your work sheets were not kept?

A. The work sheets.

Q. But is not this graph that you have produced here—the original graph which is marked G-34-1/2—is not that your working paper?

A. That is your final paper.

Q. That is your final paper?

A. Yes, sir.

Q. That represents the conclusion of all of your work, does it not?

A. Yes, sir.

Q. And that was the basis of your estimates?

A. Yes, sir.

Q. Now will you tell us something about your experience as a shipbuilder?

A. Something over forty years ago I started in the shipbuilding business as an apprentice with Wil-

liam Cramp & Sons, Philadelphia, Pennsylvania. After serving my time there I accepted a position with the Newport News Shipbuilding and Drydock Company, at Newport News, Virginia, as draftsman. Remained there for a period, then I accepted a position as draftsman with the Maryland Steel Company, at Sparrows Point, Maryland. Left there, went back and I accepted a position with the Newport News Shipbuilding and Drydock Company, at Newport News, as leading draftsman. Remained there for a period and I accepted a position in the office of the superintending constructor, United States Navy at Newport News, Virginia.

Q. Who was he?

A. Naval Constructor Woodward. I was then ordered from the office of the superintending constructor at Newport News to the Bureau of Construction and Repair at Washington, where I served a short time as draftsman in charge, and then became chief draftsman. Remained there until I accepted a position as assistant manager at the Fore River plant and eventually became vice-president. Remained in that position until I was appointed the technical manager of the Bethlehem Shipbuilding Corporation.

Q. During how many of those years were you associated with Admiral Bowles?

A. About ten—or thirteen; about thirteen years.

Q. During what years was Admiral Bowles president of the Fore River Shipbuilding Company?

A. From the latter part of 1903 until the end of 1913 or beginning of 1914.

Q. For how many years were you associated with Mr. Powell?

A. From 1914 until 1920, I think; when he left the Bethlehem Corporation.

Q. When you were associated with Admiral Bowles, he was always your superior officer?

A. Yes, sir.

Q. That is both while you were at Fore River Yard and before that, when you were in the Navy?

A. Yes, sir.

Q. What experience had Admiral Bowles in ship construction?

A. He was a graduate from the Naval Academy, had a post graduate course abroad in naval architecture, returned to this country as a constructor at the Norfolk Navy Yard, from there he went as constructor at the Navy Yard at Brooklyn, New York, then became chief constructor of the United States Navy, and afterwards president of the Fore River Shipbuilding Company.

Q. I have heard him referred to as the builder of the Great White Squadron; is that correct?

A. I have heard that too.

Q. What does that mean, and is there any truth in it?

A. I don't know what it means.

Q. Did he build the White Squadron?

A. He built a couple of ships while he was a constructor, and then of course he was in charge of the design of many of them when he was chief constructor.

Q. During the time that he was president of the Fore River Company, was he in touch with shipbuilding costs?

A. Yes, sir.

Q. Did he go over estimates that were made in normal times?

A. Yes, sir.

Q. Was he familiar with your method of figuring costs?

A. Yes, sir.

Q. Was he familiar, in particular with your use of curves in order to plot costs?

A. Yes, sir.

Q. You have said that your relations with Admiral Bowles had been pleasant?

A. Yes, sir.

Q. And always remained so?

A. Yes, sir.

Q. What do you know about the relations between Admiral Bowles and Mr. Powell?

A. They were very much strained.

Q. For personal reasons?

A. Yes, sir.

Q. So that there was not a feeling of confidence existing between those two men?

A. No, sir.

Q. What type of boats were built at Fore River while Admiral Bowles was there?

A. We built colliers, tankers, car floats; tugboats, river steamers, sound steamers, battleships.

Q. Any cargo boats?

A. Tankers are cargo boats.

Q. We have distinguished here between tankers and cargo boats. Did you build cargo boats as we have used that term in this case?

A. None of the particular type which the Government wanted for its war purposes.

Q. What type of cargo boats had you built at Fore River?

A. I would have to look at the list and pick out just what we did build there. We built some boats

for the Brunswick Line, which are single-deck cargo boats, but I would not say we built, there wasn't practically any built in this country, of what you would term an overseas type of cargo steamer. They were mostly special types for coastwise trade, or inter-coastal business.

Q. But you built that type of cargo boat at Fore River?

A. Yes, sir.

Q. So that is it fair to say that Admiral Bowles was familiar with the cost of building tankers and cargo boats, at least of the type that had been built at Fore River?

A. I should say that he was familiar with the cost of all different types of marine construction.

Q. Including tankers and cargo boats?

A. Yes, sir, because if you built one you could get a very good idea of what the others were. He knew about what the differentials are between them and you have a very good idea of the relative costs of them.

Q. Was Admiral Bowles generally regarded as an experienced naval shipbuilder?

A. He was.

Q. And as a man who knew his business?

A. Yes, sir.

Q. Both as to construction and cost?

A. Yes, sir.

Q. You told us, I think, yesterday that at some time Bethlehem or Fore River abolished the estimating department. Which was it, Bethlehem or Fore River?

A. Fore River had become part of the Bethlehem. It was the Bethlehem Fore River plant.

Q. Well, when the estimating department was

abolished, was that before or after the consolidation?

A. Before.

Q. It was before?

A. Yes, sir.

Q. Then your reference was to the Fore River plant when you said that the estimating department had been disbanded? When you said that your estimating department had been disbanded you referred to the Fore River plant?

A. It referred to the Fore River plant.

Q. Had you ever worked at any of the other Bethlehem Yards except Fore River?

A. No, sir.

Q. You had had no experience with those yards whatever?

A. None.

Q. You were, however entirely familiar with Fore River, and with their efficiency and methods of cost accounting at Fore River?

A. Yes, sir.

Q. About when was it that Fore River disbanded its estimating department?

A. Oh, approximately a year before the organization of the Bethlehem Shipbuilding Corporation.

Q. And prior to that date, and as far back as your connection with the company went, had you always had an estimating department?

A. Yes, sir.

Q. And estimates had been prepared by that department?

A. Yes, sir.

Q. Why did you disband the estimating department?

A. Because it was absolutely useless to maintain one.

Q. Why?

A. It was impracticable to make an estimate.

Q. Tell us how the estimating department would make an estimate in normal times?

A. They would get the plans and specifications. They would go through the specifications and get therefrom all the different parts which would have to be purchased from the outside.

Q. In the first place, they would have to have plans and specifications before they could do anything?

A. Yes, sir. They would pass these matters on to the purchasing department, who would get bids on the materials that were to be purchased. If we had not a contract with the Steel Company for the steel, we would write to them and tell them we had this inquiry and ask them to give us a quotation upon the steel, giving them approximately the tonnage, and which they would furnish steel at that price for that particular vessel during the period of construction. Then they would take the plans and they would figure out the quantities under the different classifications.

Q. Quantities of material?

A. Of material. This was done in great detail in each of the jobs, the different types and kind of materials. They apply the prices on those materials and get the material costs. The labor costs will be based upon different factors. There will be so much a pound for labor on steel, so much a board foot on lumber work, so much a square yard on paint work, and so on. In that way they arrive at the cost of the different jobs.

Q. In other words, in normal times your estimating department would take the plans and specifications and they would make an estimate in great detail?

A. Yes, sir.

Q. Of the cost of material, item by item?

A. Yes, sir.

Q. And the cost of labor?

A. Yes, sir.

Q. How long would such a job take in normal times, through your estimating department?

A. Well, it would take between two and three weeks, depending upon the size of the job. Some would take longer.

Q. You mean for each type of vessel?

A. Yes, sir.

Q. Why was it not practical to continue to estimate in that way when the war came along?

A. Because there weren't any prices that you could obtain for materials. If you asked a vendor to give you a price, he simply wasn't giving them. You had an order to place with him, he would take the order, give you the price and give you a probable delivery.

Q. Let us see about that. When you made up your estimates in November of 1917 you had a fixed price on certain steel products, did you not?

A. That is only a small proportion of the total cost of the ship.

Q. Yes, but as to your plates and shapes and rivets?

A. Yes.

Q. You had a price which had been fixed by the War Industries Board?

A. Yes, sir.

Q. So that you know what that was?

A. Yes.

Q. How long would that price hold good, do you remember?

A. Until the first of January.

Q. And then later it was extended until when?

A. The first of April.

Q. How were orders placed under the War Industries Board prices?

A. Your requisitions were gotten out, the material schedules, and then they went to an allocation committee.

Q. That is not what I meant. Did your orders call for the price fixed by the War Industries Board at the time the order was given, or did they call for a price in effect at the time of delivery?

A. The price that was in effect at the time of delivery.

Q. What about materials other than plates, shapes and rivets and steel generally which was subject to the War Industries Board price? Was there any fixed price on those other articles?

A. Oh, on some few items, for instance the price on billets, bar iron, but they did not affect shipbuilding materials until they were worked into something. The same way with copper, that is, ingot copper, casting copper. But you had a vast amount of manufactured material that was not fixed. Your lumber was not fixed, any quantity of materials that entered into it was not fixed.

Q. Were there any other items that made it difficult or impossible to estimate in the usual way? What about your estimate of the cost of labor?

A. That was extremely difficult.

Q. For what reason?

A. Because you did not know what your efficiency was going to be, due to your expansion.

Q. Why not? Give us some idea of what the expansion was.

A. The expansion would have been that when we operated in normal times at Fore River we operated somewhere between three and four thousand men. Now you expected to build up probably somewhere around 17,000 men.

Q. How high did you get, do you know?

A. At the Fore River plant?

Q. Yes.

A. I guess you got up to that fully, didn't you?

Q. I think the testimony in the last proceeding is that you got up to 20,000, 22,000, the testimony is. Is that your recollection?

A. My recollection is not clear, but I know we figured that we would have to increase the force tremendously, and it was a question where we were going to get the labor.

Q. Were there trained shipbuilders in the country enough to make up that additional force?

A. There certainly were not. There were a lot of new yards started and they took the trained shipbuilders from you to get the nucleus of their force and left you bad off.

Q. In other words, you not only could not get trained men to make up the additional force that your expansion required, but the trained men that you did have and had developed were taken by new yards as the nucleus of their forces?

A. Yes, sir.

Q. And that was going on all through the country?

A. Yes, sir.

Q. So that made the question of the efficiency of labor a very uncertain item; is that right?

A. Very uncertain.

Q. What about the question of transportation?

A. In that, of course, you did not know what was going to happen.

Q. You knew what your rates were?

A. Yes, but you did not know how long they were going to hold.

Q. You did not know how long they were going to hold, but how about the movement of the materials?

A. You would be right up against the question of the movement of material.

Q. On account of the roads being taken up by the transportation of troops and materials for the troops?

A. It looked as though it might put you in a situation where you would have to do a lot of transportation by means of trucking in order to get stuff done, which would increase the cost tremendously.

Q. Is ability to get your materials in as you need them an important element of cost?

A. Decidedly important.

Q. All of the vessels which were under construction in the various Bethlehem Yards were requisitioned by the Fleet Corporation, were they not?

A. Yes.

Q. In August of 1917?

A. Yes, sir.

Q. And some time after that requisition order you were informed that Bethlehem would be required to build additional ships for the Fleet Corporation up to the capacity of your plants?

A. That was after the organization of the Shipbuilding Corporation.

Q. After the organization of the corporation?

A. Yes, sir.

Q. Were you told at that time what type of boats you would be called upon to build?

A. No, sir.

Q. Did you have any reason to assume that you would be called upon to build any particular type of boat?

A. Well my recollection on that matter was that the Board was going to require tankers. There was a shortage, and there was no question that if tankers were going to be built the old line yards would be called upon to build them.

Q. Why was that?

A. Because they were the only places that they could be expected to be built. You couldn't expect new yards to build them because it was more particular work than the ordinary tank work.

Q. In other words work that required experienced shipbuilders to build?

A. Yes.

Q. And whether you were told or not you had reason to believe if there were to be tankers in the Fleet Corporation program it was the old yards like Bethlehem which was going to get that work because the new yards were not capable of doing it?

A. Yes, sir.

Q. When Mr. Powell told you in November of 1917 that you were shortly to be called upon by the Fleet Corporation to submit proposals for additional ships, did you then have any information as to the type, size or number of ships which you would be asked to build?

A. No, sir.

Q. And of course you had no plans or specifications?

A. Well if we did not know what we were going to build we wouldn't know whether we had plans or specifications or not.

Q. Why didn't you get Mr. Schulze or somebody else who had been in the estimating department to make up figures representing the approximate costs instead of doing that yourself?

A. Mr. Schulze had been out of the estimating department for some time and he was in the auditing department and I had been closely associated with the situation and its many changes. I felt that I could handle the job better than Mr. Schulze could or anybody else in the organization and it was my job to do it and I did it.

Q. Did you need any help from Mr. Schulze?

A. No, sir.

Q. Could Mr. Schulze help you in that job?

A. He may have.

Q. Your job, as I understand it, was to get certain information from your Purchasing Department, from your Accounting Department, from your Traffic Department, and then with that information to apply certain factors which would develop according to your own experience and judgment; is that right?

A. Yes, sir.

Q. After talking to some other people, I think you said, in the case of your proper allowance for inefficiency of labor?

A. Yes, sir.

Q. So that that was after you had gotten the

necessary information regarding the costs on boats a one-man job, wasn't it?

A. Practically so.

Q. Now you said that you had been in the habit of using curves or graphs like this for the purpose of estimating costs?

A. Yes, sir.

Q. How long had that been your habit?

A. For years, ever since I had taken up the question of studying costs.

Q. You mean to say that you had used such curves as a basis for submitting estimates, instead of putting the estimates through your Estimating Department?

A. For approximate estimates, yes.

Q. How would you use an approximate estimate, for what purpose?

A. Well often times the manager or superintendent marine engineer of an organization might send for you and tell you they are contemplating putting in additional tonnage and he don't know just what they are going to build but he thinks it will be about thus and so, and we will take a tanker, as an illustration, and as actually happened in the Standard Oil Company, and he wants to submit to his Board and get appropriations for the construction, three or four different types or sizes of ships. They would hardly ask you to sit down and note estimates for those.

Q. You mean detailed estimates?

A. Detailed estimates, but he wants to get what the approximate cost of such things will be. Well you give it to him from these curves. Now these curves may be worked up to a certain date on a standard base and the approximation on these dates

would be based on the price of steel because that seemed to be the fluctuation for the material market, and your office had an idea about what your labor situation was as to whether it had increased from the time you made this base figure or whether it dropped, but we never figured on it dropping because it always went up. You take that and you could add 10 per cent. to your base curve or you could deduct from it and you could give the man an approximation on a 10,000 ton job or a 8,000 ton job or a 6500 ton job or whatnot.

Q. You mean by taking it from that graph or curve that you had prepared?

A. Yes.

Q. And making the proper allowance for any changes in the base cost of materials or labor?

A. Yes, and not only that, but on the variation of speeds.

Q. And when you say that you had been in the habit of doing that I would like to give the Master some idea of whether that was an occasional thing or whether it was a frequent thing for you to do?

A. It was quite frequent.

Q. And what did your experience show as to the accuracy of such estimates as compared with the more detailed estimates that were subsequently to be submitted in the case of the order being placed?

A. Well I would like to put that another way. You might ask me how my figures compared with the final cost with relation to the estimated costs.

Q. All right then, just answer that question.

A. Often times my approximate estimate was closer.

Q. Your approximate estimate was closer than the detailed estimate?

A. My approximate estimate was closer than the detailed estimate.

Q. Do you happen to have such a chart?

A. Yes, sir.

Q. Will you let us look at it, please.

A. Yes, sir.

(Chart referred to marked for identification H. B.)

Q. Will you tell us first when the chart was prepared?

A. In 1912.

Q. And where did you find it?

A. In my files.

Q. In your personal file?

A. Yes.

Q. Will you tell us what the chart represents?

MR. BROWN: I object, solely on the ground that I think we are getting far afield and the record is getting pretty long. If you prefer to have this go in I withdraw the objection.

THE MASTER: I suppose Mr. Evans has a purpose in developing this.

MR. EVANS: The suggestion has been made before and will be made again that this is a most extraordinary way of estimating cost and I want to show that to this witness it was not extraordinary and that other people considered it not extraordinary.

MR. BROWN: I don't think you have read my brief or you wouldn't say that. There is no such suggestion in the brief and there was no such suggestion in the hearing before Mr. Roberts.

THE MASTER: I do not know what other courts higher than this will do but I can say that the Master will take judicial notice of the fact that this is more or less of a customary way of estimating costs in numerous concerns. The chart system has been recognized as a method of estimating costs, and if Mr. Evans believes it will be helpful to the record for the purpose of justifying Mr. Brown's method of doing it, all right.

MR. EVANS: If that issue is out of the case, and this is the first time I have been given the understanding that it is out of the case, it is not necessary.

MR. BROWN: I will withdraw my objection.

BY MR. EVANS:

Q. Go ahead and tell us what that is?

A. This is a comparison of costs between colliers and oil steamers, which are tankers, based on certain suppositions as steel at 1.25, it was based on an eight hour basis and 55 per cent. for expenses, and it was made back in June, 1912 and the figures that were taken on here were based on actual construction at the plant.

BY MR. BROWN:

Q. What figures were that that you are talking about?

A. The figures from which these costs lines were derived.

Q. Were based on the returned cost of other ships?

A. And sometimes probably on estimated cost. Of course there are varying speeds and so forth and necessarily they had to be estimates. We had a

big raft of ships of different speeds and sizes, and this represents the collier costs and this represents the dollars and this is the dead weight on the same basis with the exception this was carried in a straight line and not carried into your zero, but the cost per ton is carried through on your colliers at a speed corresponding to 10½ knots and 12 knots, and there is no cross curve of a dead weight nature on the oil steamers because it was put on here as a check. Now the use to which this was put is as I explained heretofore.

Q. Was that used in connection with lump-sum contracts for colliers?

A. Yes, sir.

Q. And was based on the cost of colliers previously constructed at the Fore River plant?

A. Yes, sir.

Q. It was based on the returned cost of Colliers previously constructed at Fore River?

A. Yes, sir.

Q. Do you remember how many colliers were considered in reaching the figures on that chart?

A. Four that I can remember of now.

BY MR. EVANS:

Q. Now on this graph that has been marked for identification H. B., you have lines representing the total cost lines exactly as you have in your graph G-34½, haven't you?

A. Yes, sir, that is the same general way except that it is on a contracted scale.

Q. And you also have the cost per dead weight ton line just as you have on your graph that you developed in this case?

A. Yes, sir.

Q. Directing your attention again to your graph

G-34½, first will you tell us what is meant by dead weight tonnage?

A. The dead weight tonnage of the ship is total displacement of the vessel to its loaded draft less the light weight of the ship.

Q. What is the light weight of the ship?

A. That takes in the weight of the Hull, machinery, spares, some tools, the water in the boiler to a steaming level and so forth.

Q. Without going into detail would it be approximately correct to say the light weight is the weight of the materials that go into the construction of the ship?

A. Yes, that is substantially it, goes into the Hull and the machinery of the ship.

BY THE MASTER:

Q. What is the difference between what you call your dead weight cost per ton and the total cost of your ship on this chart? What elements of difference are there except that one is on tonnage basis and the other is on a total basis?

(No answer.)

BY MR. EVANS:

Q. Your cost per dead weight ton is total cost divided by tonnage, is it not?

A. Yes.

Q. They are both on the basis of dead weight?

A. Yes.

Q. Now I want to find out what the light weight of the ship is and I understand that for all practical purposes we can understand that that means the weight of the materials that go into the finished ship; is that right?

A. That is right.

Q. Well it is what the ship would weigh if you could put it on a scale and weigh it, isn't it?

A. Yes, without cargo and fuel.

Q. Now then the dead weight, as I understand it, is the weight of the water which the vessel displaces when it is loaded less the light weight of the ship; is that right?

A. That is right.

Q. Now on this chart, when you read the figures along the bottom of the chart you read in hundreds of thousands, do you not, when you are talking about total cost?

A. Yes, sir.

Q. And when you are talking about cost per ton you read in dollars?

A. Dollars, yes, sir.

Q. So that to illustrate, if you want to get the cost of a 10,000 ton tanker on the East Coast you read down to the bottom line and there you get the figure $2,000,000. and that represents your total cost?

A. Yes, sir.

Q. And $200. would represent your cost per ton, is that right?

A. Correct. The chart is not complete here but by putting in your scale of dollars by dead weight this would be on your dead weight ton $210. and this $220.

Q. In other words you read in dollars instead of thousands?

A. Yes, sir.

Q. Why did you take Hulls 253 and 254 of the basis of this chart?

A. They were constructed at the Fore River plant and they were ships that I was perfectly fam-

iliar with and they were the latest ships that had been finished and it seemed to me that it was about as suitable a ship to take as the basis of any. In fact it was about the only ones that we had there.

Q. Why did you select a tanker rather than a cargo boat?

A. We didn't have any cargo boat at Fore River to select from.

Q. Did you have any cargo boats at any other points that you could have used properly?

A. May have had at Sparrow's Point.

Q. Were you familiar with the system of cost accounting at Sparrow's Point?

A. No, sir.

Q. Was it important for the purpose of making up your estimates that you should know something about the system of keeping the cost accounting?

A. I shouldn't think so.

Q. Wasn't it important to know what items were charged as labor or charged as material?

A. Well at that time when you are figuring the proposal, trying to get within the range of proper cost, I shouldn't think that that would itself have very much importance.

Q. Isn't it a fact that in some systems of accountings in shipyards items of material will be charged to material and in others they might be charged to operating expense?

A. That is quite right.

Q. Isn't it also true that in some cases fabricated material, that is the labor on the fabrication is charged as an item of material whereas in other systems the cost accounting is carried on so that the material and labor are charged separately?

A. There is a lot of work that is done in what

you call the manufacturing job order system and in which a lot of material is put through and the goods manufactured and put into store and finally charged up as materials, where in other plants it is charged out as material, labor and overhead.

Q. So that if you wanted to get as accurate an approach to this question as you could it would be desirable to know something about the cost accounting methods in the particular yard that you were using, wouldn't it?

A. The cost distribution.

Q. Did you know anything about the cost distribution in other yards than Fore River?

A. No, sir.

Q. Your letter of December 19th, in which you submitted proposals, says that the 9100 ton tankers which you proposed to build at Fore River were to be in general duplicates of Hulls 268 and 269 commandeered by the Emergency Fleet Corporation on August 3, 1917?

A. Yes, sir.

Q. Why didn't you take those boats as the basis of your estimates?

A. They were not anywhere near completed.

Q. Were they duplicates of 253 and 254?

A. Substantially so, yes, sir.

Q. What was the difference?

A. Probably some difference in the cargo handling system.

Q. Can you give us any idea which was the most expensive type of boat to build, 253 and 254 or 268 and 269?

A. Having looked at the final costs of 268 and 269, as compared with 253 and 254, I would say 268 and 269 would cost more.

Q. Cost more to build?

A. Yes, sir.

Q. Would it be a substantial item?

A. No.

Q. So that, substantially, when you were basing your figures on 253 and 254 you were estimating on about the type of boat that you contracted to furnish?

A. Yes, sir.

Q. You developed your factor of increase on Job 12 solely by reference to the factor of increase on plates, didn't you?

A. Yes, sir.

Q. And Mr. Brown this morning called your attention to the testimony given before Mr. Roberts at the last hearing and he stopped reading from your testimony at a point which left the impression that you knew that by using the factor based on plates alone rather than a composite factor based on plates and shapes, you had over-estimated or reached a figure some $33,000. in excess of what it would have been if you had used a composite factor?

A. Yes, sir.

Q. I want to read you a little bit more of your testimony there following what Mr. Brown read on page 182. I asked you, "Did you make any calculation or otherwise of the amount or do you simply mean", and then you broke in, "I mean it would be something in excess if these prices remained, and when Mr. Brown asked you whether you knew the figure was something like $36,000. and your answer was that, "No, I don't know whether it was $37,000. or $35,000. or $30,000. but I knew it would be an amount"—you so testified, didn't you?

A. Yes, sir.

Q. And is that a fact that you knew as a result of developing a factor on plates alone instead of a composite factor based on shapes and plates that that figure was more than it would have been?

A. Yes, sir.

Q. Why then didn't you develop a separate factor for plates and shapes or a composite factor representing plates and shapes?

A. Plates were the largest amount in the job and when we developed the factor of increase on the other items we did not take in the increase on plates and shapes which would be utilized in jobs other than Job 12, which amounted to quite an appreciable amount, and it was figured that by taking the plates alone and using that as your factor you would have a substantial offset by taking the average commodity prices on the other materials and absorbing the increase on the plate and shapes therein.

Q. In other words your factor of increase on material other than Job 12 was 1.75?

A. Yes.

Q. It was less than your factor of increase on plates or plates and shapes?

A. Yes.

Q. And a substantial part of the material other than went in Job 12 is made up of plates and shapes, is that right?

A. It is.

Q. That is fabricated from plates and shapes?

A. Yes, sir.

Q. So that to the extent to which material other than that in job 12 was being fabricated from plates

and shapes, your factor of increase there of 1.75 was too low?

A. Yes, sir.

Q. The bulk of your material on Job 12 was plates?

A. That is the largest portion of the material on Job 12.

Q. And next to that comes shapes?

A. Yes.

Q. And next to that comes rivets, I think?

A. Yes, sir.

Q. Now your factor of increase on shapes would have been less than your factor on plates?

A. Yes, sir.

Q. What about your factor on rivets?

A. I think that is higher.

Q. There was a bigger spread, wasn't there, between the pre-war prices on rivets and the War Industries Board prices on rivets than there was on plates?

A. I think that is right.

Q. Your factor of increase would have been higher?

A. Yes.

Q. So that, as you said in the hearing before Mr. Roberts, that while you realized that by using the factor developed from plates alone, assuming that the price of shapes and the price of plates remained relatively the same throughout the period of construction, that your estimate would have been higher if you had taken the composite figure, that in view of the fact that the price on plates before the War Industries Board had fixed any price was higher than the price on shapes, you regarded your plate price as a better barometer of prices generally than

your shape price or a composite price; is that correct?

A. I should say that would be substantially right.

Q. Now at the time you were making up these estimates you were estimating the cost over the period of the construction, weren't you?

A. Yes.

Q. And how long would you estimate the period of construction to be?

A. I think our first program covered 18 months, something like that.

Q. And of course nobody at that time foresaw the termination of the War within that period?

A. That is right.

Q. And under your contracts while you had protection against increase in wages you had no protection against increase in transportation cost, did you?

A. No, sir.

Q. And you had no protection against increase in material costs?

A. That is right.

Q. Now you did, however, base your prices, so far as material costs were concerned in Job 12, on the War Industries Board price current in November, 1917?

A. Yes, sir.

Q. And yet that price held good only until January of 1918?

A. Yes, sir.

Q. And then was extended only until April?

A. Yes, sir.

Q. And was subject to revision thereafter?

A. Yes, sir.

Q. Now, did you make any inquiry as to what the trend of plate prices was apt to be, if there was to be any change?

A. Yes, sir.

Q. Of whom did you inquire?

A. Mr. Blakely who was the head of the structural steel department of the Bethlehem Company.

Q. What was the information you got?

A. The information I got from him was that the trend would be up rather than down.

Q. How did you arrive at your delivered price from the base price?

A. By adding the freight and adding on an amount for inspection charges and probably there was a little margin. We allowed the price on steel 3.25 and freight was .24, which made it 3.49 and we allowed 10 cents a hundred on that to cover inspection charges and that also gave a little leeway on the price.

Q. What about an increase in freight? Did you have any allowance in there for an increase in freight?

A. Yes, that would cover anything.

Q. Including the increase in freight or increase in transportation charges that you had to charge?

A. We had that in case we had to do a lot of trucking and all that, and it was supposed to be an item that would help out.

Q. I think you have already explained what goes into material other than Job 12 and how you arrived at your factor of increase of 1.75 on that?

A. Yes, sir.

Q. I don't think that you have explained what is included in the item of plant operating expense

which you figured at 60 percent. of your direct labor cost. What is included in that item?

A. That item includes materials that are used or consumed in the construction of the vessels, in the operation of the plant and also covers labor which is utilized in the construction of the ship or the operation of the plant but is not direct labor used in the construction of the ship. The division of that would be about 40 per cent. on material and approximately 60 percent. on labor.

Q. Now give us some idea what kind of material is included in plant operating expense?

A. Coal, oil, maintenance parts of all kind. If you want to get down into detail, there is a lot of stationery, glue, sandpaper, hardware, lumber, miscellaneous steel materials, valves, pipes, ties, railroad irons, water that you purchase, electricity that you purchase, your insurance is charged up I think on your material end.

Q. I think that gives us a pretty good idea. In other words it is the miscellaneous material that is consumed in the construction of the ship that does not become part of the finished ship?

A. Or the operation of the plant.

Q. And it includes as an item of labor what we would ordinarily call indirect labor?

A. Well that is what I said, it is the labor used in the operation and management of your plant.

Q. Did you also include in your item of allowance for plant operating expense what was known as A. S. & G.?

A. Yes, sir.

Q. A. S. & G. and plant operating expense are not the same thing, are they?

A. No.

Q. But you included the one in the other?

A. Yes, sir.

Q. I think you told us yesterday that in normal times when your yard was functioning to capacity that your experience showed that your plant operating expense was 65 per cent. of your direct labor cost; is that right?

A. That was our total expense running about 80 per cent, capacity.

Q. In normal times running 80 per cent. capacity your plant operating expense, including A. S. & G., was about 65 per cent. of your direct labor?

A. Yes, sir.

Q. What do you mean by total expense?

A. This was prior to the Bethlehem taking over the plant.

Q. I understand but I want to get a comparison between the same things. You have included in your allowance for plant operating expense certain items?

A. Yes, sir.

Q. And you figured that at 60 per cent. of the direct labor cost?

A. Yes, sir.

Q. Now I want to find out what your experience had been as to the relation between the cost of those same items as applied to your direct labor cost in normal times with your plant operating at 80 per cent. capacity?

A. My recollection of it was it was around 65 per cent., taking the whole business, but I will state that that had a rapid, continuing rise right along.

Q. So that if you had taken the year, we will say of 1917, or the year preceding the preparation of these estimates, would it have run more or less than 65 per cent.?

A. Much more.

Q. Now, in taking a figure of 60 per cent. of the direct labor expense to represent a reasonable allowance of plant operating expense, did you take into consideration that there would be economies in operation due to the fact that you would be working on the same type of vessel, that you would be working to the full capacity of your yards, that you would be probably working overtime? Did you have those factors in consideration?

A. The factors that you are going to work an increase of force about four times increase, of course, don't mean that you had to increase all your overhead in proportion to that, but you did have to increase a considerable amount, so it became a matter of judgment more than anything else as to what you would use as you had to have certain factors which gave you a reason for the adoption of a certain figure.

Q. Will you tell us what factors you did take into consideration in forming your judgment of what was a reasonable allowance?

A. I don't believe that I took anything more in consideration than merely the consideration of increase of forces, I mean the increase in the amount of labor and in relation to superintendence and so forth. Of course you had no selling expense; your administrative charges would not go up in proportion to your increased labor roll.

Q. Taking those factors into consideration did you think that an allowance of 60 per cent. of direct labor cost was a reasonable allowance?

A. Yes, sir.

Q. Assuming the conditions as you foresaw them?

A. Yes, sir.

Q. And the figure which you arrived at by adding together your estimated cost of material and labor and plant operating expense you added a flat 10 per cent., didn't you?

A. Yes, sir.

Q. And on your chart you show that?

A. Yes, sir.

Q. And your chart says, "Plus 10 per cent. contingence"?

A. Yes, sir.

Q. You told us yesterday I think that included in that 10 per cent allowance was an allowance for hotel equipment which was ordinarily supplied by the owner and also for armed guard and war zone equipment?

A. Yes, sir.

Q. Did you know what those figures were or what proper allowances were for those items at the time you made up your estimates?

A. No, sir.

Q. Where did you get that figure for war zone equipment and armed guard equipment?

A. Mr. Bowles.

Q. Was that before or after you had made up your chart?

A. After.

Q. Was it before you had submitted your proposal on December 19th?

A. Yes, I think it was.

Q. Where did you get your figures for hotel equipment?

A. Well we had a pretty general idea of what it cost for hotel equipment on board a ship and I merely said $15,000. It might be $13,000 or it might

be $17,000., and I didn't consider it at the time we were making the figures.

Q. But when you gave us the amount which is intended as an allowance to represent those items in your 10 percent. you did not want us to understand that you figured those amounts at the time you were making up your estimate and then added enough over to make up the 10 per cent.?

A. No, sir.

Q. But you allowed your 10 per cent. and later got a figure from Admiral Bowles as to the proper allowance for war zone equipment and either at the time or later got an approximate idea of what your hotel equipment would cost?

A. Yes, sir.

Q. And those items you now tell us are included in your item of 10 percent.?

A. That is right.

Q. And the balance really represents allowance for other contingencies?

A. Yes.

BY THE MASTER:

Q. Let me clear it up for my own mind. As I understand the 10 per cent. was an arbitrary percentage that you used in fixing the total cost on your chart?

A. Yes, sir.

Q. But before you knew actually what the war zone equipment cost, armed guard equipment cost and the actual hotel equipment might be?

A. Yes.

Q. You subsequently found out what those actual or approximate figures in the total were?

A. Yes, sir.

Q. But the 10 per cent. which you added to the

other known figures that you had was inclusive of all of these items?

A. Yes, sir.

Q. But not inclusive of the detail that you subsequently developed; that is correct?

A. That is correct.

BY MR. EVANS:

Q. What was the figure that Admiral Bowles gave you for war zone equipment?

A. The first figure he gave me was $10 a ton.

Q. Regardless of size?

A. Regardless of size and I questioned that and then afterwards he said a vessel of around 10,000 tons would be about $75,000.

Q. And that is where you got the figures that you gave?

A. Yes.

Q. I mean you are using Admiral Bowles's figure?

A. Yes.

Q. And that is the figure which you now use as the allowance for war zoning equipment?

A. Yes.

Q. What was the necessity of having another tanker in order to develop your cost?

A. Well that would give you a check and a drift on the curve and it would take in and develop up to what the other plant would indicate.

Q. Which was really the basis of your estimate, the 9100 ton tanker or the 14,950 ton tanker?

A. The 9100 ton tanker.

Q. And what bearing would any variation in the figures that you derived after analysis of the larger tanker have one way or the other on the cost of boats between 10,000 tons and 7500 tons?

A. Well if the price was high it would have

given you a little higher price above the 10,000 ton line and lower price below the 10,000 ton line and if it was lower it would be vice versa.

Q. In other words if you got that spot and if the figure that you developed on your larger boat was higher than it should be the result would be that for prices taken off of that curve for any boat above 10,000 tons your estimate of cost would be higher than it should be?

A. Yes, sir.

Q. And on any boat below 10,000 tons your figure would be lower than it should be?

A. Yes, sir.

Q. And was it necessary for the purpose of getting a reasonably accurate approximate cost within that range that you should know the cost of a 14,950 ton tanker with the same accuracy that you developed the cost of the 9100 ton tanker?

A. No.

Q. Why is that?

A. Well, just for the reason that you have stated, and another feature, of course, that you must recall, that with all of the unsettled conditions you have in an approximation of what you were aiming to give was a price within a proper range of cost. You did not expect to get within 5 or 10 per cent. because that is as close as you can get under normal conditions and in these unusual conditions you don't know where you were going to get.

Q. In addition to that, as I understand it, if you were bidding on a 15,000 ton tanker then any error in your estimate on 15,000 ton would be material?

A. Yes, sir.

Q. But if you were bidding on a 9100 ton tanker it makes no difference?

A. Yes.

Q. Or if you are bidding, rather, on a 10,000 ton tanker it makes no difference?

A. Well the percentage is so small that it is immaterial.

Q. Why did you take 158 and 159 to arrive at another spot on your chart?

A. I took that because they were constructed practically during the same period, contracted for substantially at the same time, checked it off and found that the light weight of the ship cost about the same in dollars per ton, a little higher in the material and a little lower in the labor, but the combined showed about the same. That seemed to be an indication that it would be a fair comparison to make.

Q. I was going to ask you why you felt justified in applying the same factors of increase to the returned cost of 158 and 159 as you did to 253 and 254?

A. I think tha what I gave you before explained that, because your material cost ran pretty close the same, within a reasonable percentage, and by simply applying the factors one part of it would be high and the other part of it necessarily must be low, so that you would have to change your factors of the two.

Q. In other words your cost per ton of material was practically the same?

A. As close as you could expect to get it.

Q. If it were a fact that the cost of material of Job 12 on 158 and 159 were higher than the cost of material in Job 12 on 253 and 254, but the total material cost was about the same; then it would necessarily mean that the reverse was true as to the cost of material other than in Job 12; is that right?

A. That is right.

Q. And if you had used a composite factor representing the factor of increase on all materials you would get the same result?

A. Yes, sir.

Q. So that one would balance the other if there was no error?

A. Yes, sir.

Q. Were they the same type of boats?

A. No, sir.

Q. What was the difference?

A. The 9100 ton tanker was a two-deck, 3-island tanker fitted with a single screw machinery, and the 158 and 159 was what is termed a shelter deck type of steamer fitted with twin screws.

Q. Does that make any difference in cost?

A. Yes, sir.

Q. Did you take that into consideration at the time you were making your estimates?

A. It was considered because you realize that the shelter deck tanker if plotted on the dead weight would be less in cost. There would be some additional actual cost on the shelter deck as compared with the 3-island to compensate for your difference in dead weight.

Q. When I asked whether you considered it I really meant to ask whether you made any definite allowance to compensate for the difference in type of vessel?

A. No, sir.

Q. But you were conscious of it?

A. Yes, sir.

Q. And that difference was commented upon at the last trial by the Government expert, was it not?

A. Yes, sir.

Q. And afterwards you explained that by ref-

erence to some boats that had been built in some other yard, didn't you?

A. I don't think that particularly.

Q. At any rate have you since the last hearing made any calculation to show the relation between the cost per dead weight ton of a boat such as 158 and 159, which I think you called a shelter deck type of boat?

A. Yes.

Q. And boats such as 253 and 254 which you called the 3-island type?

A. Yes.

Q. What does that show generally as to the relative cost per dead weight ton of the two types of boat? Which cost the more per dead weight ton?

A. The 3-island type.

Q. So that when you were using a shelter deck type of boat for the purpose of comparison you were using a boat which is of a cheaper type of construction per dead weight ton than the type of boat on which your estimate was submitted, is that right?

A. Yes, sir.

Q. And you have the details of that, have you, showing how your allowance would be made up on a comparative basis?

A. Yes, but I haven't it with me.

Q. But you have worked it up?

A. I have worked it up that you can get a comparison.

(Adjourned to 10 o'clock a. m. April 1, 1931.)

MR. EVANS: Mr. Mason, in reading over the transcript of the first day's testimony I found what appear to me to be some errors in the transcript, and I thought if I called attention to them we might agree that they are errors, or if we cannot agree I will ask Mr. Brown to clear them up.

The first one of which I have any note is on page 32, in the question which begins a little below the middle of the page, beginning "Can you tell us whether the heading", I think that should read "November, 1917, plus material plus wage plus 10 per cent. contingent".

THE MASTER: I think we can agree that that is the way it appears on the chart.

MR. BROWN: That is agreed to.

MR. EVANS: The next correction I have is on page 36. In the second question on that page, referring to the line which appears on the chart, instead of "increase per ton D. W. January or June, 1922", it should be "hours per ton D. W.", or at least it so appears on the chart. I suppose we may agree to that.

MR. BROWN: Yes.

THE MASTER: That is agreed to.

MR. EVANS: The next correction is at page 44, the question which I asked which here reads "Well, they are not in this material?" My recollection is that the question was "They are not included in Job 12". If there is any doubt about that, I would like to correct it.

MR. BROWN: I think that is correct.

MR. EVANS: The next one is on page 57.

The last answer on that page reads: "Yes. The freight rate on the West Coast was fifty cents per ton higher than it was on the East Coast". I think that should read fifty cents per hundredweight. Is that correct?

MR. BROWN: Yes.

MR. EVANS: Then that correction is agreed to. The next is at page 114. In the fourth line from the bottom of that page, where Mr. Brown was reading from the testimony in the previous hearing, it is quoted here, "A. By the ordinary prices between business men". I think that should read "By the ordinary process."

THE MASTER: That is agreed to.

MR. EVANS: The next correction is one that I think I will have to have Mr. Brown clear up.

MR. HALLETT: May I suggest one other correction that I have noticed? That is on page 42. The last question on the page does not seem to be answered and I imagine that a "Yes" should be in there.

THE MASTER: The answer "Yes" is correct to that.

MR. HALLETT: On page 37 the answer $1,745,000"; I think Mr. Brown answered that $1,750,000 or $1,745,000, because in his answer at the bottom of the page he said "Around one seventy-four and a half or one seventy-five". I do not know that it makes any difference.

MR. EVANS: I do not know that it makes any difference, but I am perfectly willing to correct it in that way.

MR. HALLETT: On page 31, in the first question it says "Submit with respect to tank and cargo shipped". That should read "ships".

THE MASTER: That is agreed to.

MR. EVANS: I want to refer to Mr. Brown's answer which appears at the top of page 141, which, as you read it, is hardly intelligible, and I think I will have to clear that up by asking Mr. Brown the same question.

HARRY BROWN, recalled, cross examination resumed.

BY MR. EVANS:

Q. Mr. Brown, at the first day's hearing you were asked by the Master whether you had made any studies showing the actual loss of efficiency on labor as compared with vessels built at one time as contrasted with vessels built at some other time, and I thought your answer then was perfectly clear but as it reads in the transcript it is not very clear. Will you answer that question again?

A. I have made such an investigation and I found that the loss in efficiency up to the Armistice was in excess of the loss of efficiency that I used in the preparation of the figures to estimate the cost.

Q. You used 30 per cent.?

A. 30 per cent.

Q. Increase in inefficiency?

A. Yes, sir.

MR. ROBISON: Increase in cost.

BY MR. EVANS:

Q. Increase in labor cost due to loss of efficiency?

A. Yes, sir.

Q. Between what periods did you make your comparison of actual loss of efficiency?

A. Between the period of the construction of hulls 253 and 254—

Q. Which were your base ships?

A. Which were the base ships, yes, sir.

Q. And what other ships?

A. 268 and 269.

Q. And what were they, requisition ships?

A. They were requisition ships.

Q. Completed when; sometime after the Armistice?

A. That is my recollection, and they were ships that were substantially a duplicate of 253 and 254, so a comparison could be made.

Q. Where those latter ships built at Fore River?

A. Yes, sir.

Q. You apparently stated, in your examination in chief, that when you and Powell were getting up figures for the proposal which later took the form of the letter of December 19th, you arrived at your figure for a 7400-ton East Coast cargo ship by taking the cost which you developed from your chart for a 7500-ton East Coast tanker and deducting 15 per cent. Is that what you meant to say?

A. Well, that would hardly be complete; and then making allowance for the difference in the dead weight tonnage, which was rather small.

Q. Is it not a fact that what you did was to take your price as shown by your curve for a 7400-ton tanker and then allow your differential? What I am driving at is, did you put a figure in for a 7400-ton cargo boat which really represented a figure for a 7500-ton cargo boat?

A. No, sir.

Q. Then am I right in saying that what you did

was to take your price from your curve for a 7400-ton tanker, not a 7500-ton tanker? It would be very little different, I understand that.

A. There is a little difference. I do not know just the method of procedure that was adopted on it, but I know, while it was based on the 7500-ton tanker, there was an allowance made for the difference in the size of the ship.

Q. As well as for the fact that one was a cargo boat and the other was a tanker?

A. Yes.

Q. I do not know whether I asked you yesterday why instead of going to Sparrows Point to get a larger boat for the purpose of comparison with your 9100-ton tanker at Fore River, you did not take a larger tanker that you built at Fore River, where you were familiar with costs?

A. We had not built any.

Q. You had not built any?

A. No, sir.

Q. So there was no larger vessel which you had built at Fore River, which you could use as a fair basis of comparison?

A. No, sir.

Q. Yesterday you started to tell us something about the difference in the type of vessel represented by 158 and 159 and 253 and 254, and you explained that 158 and 159 were shelter-deck boats and 253 and 254 were three-island type boats?

A. Yes, sir.

Q. And your proposals were based on tankers of the three-island type?

A. Yes, sir.

Q. Was there any other difference between 158 and 159 and the type of boat that you proposed to build?

A. Yes, sir.

Q. What was that?

A. One was a twin-screw boat and the other was a single-screw boat.

Q. Which was the twin-screw?

A. The larger vessel.

Q. That is, 158 and 159?

A. Yes, sir.

Q. Whereas you were proposing to build single screws?

A. Yes, sir.

Q. And I suppose that a twin-screw boat is more expensive than a single-screw boat?

A. Yes, sir.

Q. Am I correct in undertsanding that in a shelter-deck type of boat, for the same light weight you get a greater dead weight?

A. Yes, sir.

Q. Than in the case of a three-island type of boat?

A. Yes, sir.

Q. And is that because you can sink your boat lower in the water and get a deeper draft?

A. Yes, sir.

Q. And the result of that, as I understand it, is that for the same light weight of material you will get more dead weight in a shelter-deck type of boat than in a three-island type of boat?

A. Yes, sir.

Q. And therefore, if the light weight cost of the two boats is the same, the dead weight cost of the three-island type boat will be higher per ton?

A. Yes, sir.

Q. Because you get less dead weight per light weight in your three-island type than you do in your shelter-deck type?

A. Yes, sir.

Q. Was that difference more than enough to offset the fact that the Sparrows Point boat was a twin-screw boat?

A. No, sir.

Q. It was not more than enough to offset it?

A. No, sir.

Q. Do you mean by that that the net result was that, making proper adjustments by reason of the fact that one was a twin screw and the other was a single screw, and one was shelter-deck and the other was three-island type, the Sparrows Point boat was a more expensive type of boat to construct per dead weight ton?

A. No, it was less per dead weight ton.

Q. Then you misunderstood my question. I asked whether the difference in cost due to the fact that one was a shelter-deck type and the other was a three-island type of boat, was more or less than enough to offset the difference in cost due to the fact that one was twin screw and the other was single screw. Perhaps I do not make myself clear.

A. Do you mean to ask me if the increased cost of a twin-screw boat will be sufficient to offset the difference in the dead weight?

Q. You are putting it just the other way, but you answer that question.

A. The increased cost due to twin screws on a shelter-deck boat would not be sufficient to offset the difference in the dead weight.

Q. Since you have been working on this case, have you discovered that there were any errors in the figures that were supplied to you by your Accounting Department on either 253 and 4 or 158 and 9?

A. Yes, sir.

Q. Take 253 and 4; what error have you discovered there?

A. I have not discovered any error in 253 and 4.

Q. I think at the last hearing attention was called to the fact that in the total cost as it was reported to you by your Accounting Department, there was included an item of extras; is that correct?

A. Yes, sir.

Q. How much was that?

A. As I recall it, somewhere around $23,000.

Q. When did you first learn that?

A. At the previous trial.

Q. At the previous trial, when Mr. Sanford called it to your attention or mentioned it?

A. Yes, sir.

Q. And Mr. Sanford was one of the Government witnesses?

A. Yes, sir.

Q. Following Mr. Sanford's testimony, did you make an investigation to find out whether that were a fact, that some $23,000, if I have the figure correct—

A. Made an investigation to find out what it represented, yes, sir.

Q. And what did it represent?

A. It represented the additional amount that was paid to Bethlehem for over-time.

Q. For over-time?

A. Yes, sir.

Q. So it is a labor item, is it?

A. Yes, sir.

Q. If you had known that at the time you prepared your graph in 1917, how would it have affected your figures?

A. It would not have affected them at all.

Q. Why not?

A. Because that was an over-time that was paid

by the owner on the basis of a coefficient that was agreed upon between the owner and the builder, and it does not represent that there is $23,000 involved in the cost of the vessel, but it represents that it is $23,000 divided by the coefficient that was agreed upon, practically, so that the only thing that is in the cost of the ship is due to the actual over-time labor that was paid on the ship, and that was a part of the cost of the ship, but not reflected by $23,000.

Q. But did you not have that $23,000 in your return cost of labor?

A. No, that is the amount that was paid by the owner and that is added to the contract price, but that does not mean that the cost of the ship had $22,000 in it that did not belong to it. It was only a small amount of that that was actually paid by the builder and charged in as cost of the vessel.

MR. BROWN: Mr. Master, has this item been clearly identified in your mind? In other words, it relates to Changes and Extras, does it not?

MR. EVANS: Yes.

MR. BROWN: Has that been made clear? I am not sure whether it has or not, because there are several mistakes that have been referred to and I would like each clearly identified, so that the Master will not think this relates to one that it is not intended to relate to. I thought it might be clarified by a reference to the particular item.

THE MASTER: Mr. Evans is referring to the chart and to a base figure that entered into the making of the chart.

MR. BROWN: As I understand it, he is referring to a certain item which appears in the Exhibit G-6, and which can be identified by reference to that exhibit.

THE MASTER: I understood he was referring to the figures that were given to the witness, Mr. Brown, from the Accounting Department of the Fore River Shipbuilding plant, as the basis upon which he made his chart, and whether or not in the giving of certain figures, which have been referred to recently as Extras, there was included an item which he used which produced an improper result in his chart.

MR. BROWN: Could we not earmark that item?

BY MR. EVANS:

Q. I refer you to Exhibit G-6 and I call your attention to the item which appears under the heading "Fore River Plant No. 253"—that is Hull 253, is it?

A. Yes, sir.

Q. To the item of $28,642.90, which is listed as Changes and Extras under the heading Selling Value. Is that the item to which you have reference?

A. Yes, sir.

Q. And you say that that is an amount which the owner paid?

A. Yes, sir.

Q. But which was not included in your cost, Fore River's cost?

A. Only the amount that was paid to labor for working over-time.

Q. So that would you say that, if that fact had been called to your attention at the time you made

this graph, it would or would not have made any change in the figure which you allowed as representing the direct labor cost on 253?

A. It would not.

Q. Have you discovered any other errors in the figures that were furnished you as representing the cost on 253?

A. No, sir.

Q. Have you discovered any errors in the figures that were furnished you as representing the cost on 158 and 9?

A. Yes, sir.

Q. What was that?

A. That was a figure that was included to cover possible charges during the guarantee period of the ships.

Q. Just what do you mean by that?

A. I mean when you contract to build a ship there is usually included in the contract a clause covering the replacement of material and workmanship that may prove defective during a period after delivery.

Q. Then you mean that it was a reserve item set up on Bethlehem's books to take care of any liability under their guarantee?

A. Yes, sir.

Q. And that guarantee runs for how long?

A. It varies with different ships.

Q. Do you know how long it ran on these ships?

A. No, sir.

MR. BROWN: Is not that shown by the contract?

MR. EVANS: I suppose it is, yes.

BY MR. EVANS:

Q. Was that, in fact, an item of cost?

A. No, sir.

Q. It was, however, set up on the books as an item of cost during that guarantee period?

A. I understand so.

Q. Was it included in the cost as reported to you by the Sparrows Point Accounting Department?

A. Yes, sir.

Q. When did you find that that was a reserve rather than an actual item of cost?

A. After I came back to Bethlehem in connection with this suit.

Q. If you had been informed as to that item at the time you made up your graph in 1917, and if you had known that there were to be no charges against that reserve item, would that have made any change in the figures which you developed?

A. Yes, sir.

Q. With respect to 158 and 9?

A. Yes, sir.

Q. What factor would it have affected?

A. The factor of the material cost.

Q. And what was the amount of that item, do you recall?

A. Around $30,000.

Q. And what material costs would be affected: your material in Job 12 or other material?

A. Other material.

Q. To which you applied a factor of increase of 1.75?

A. Yes.

Q. So that by including that item as an actual item of material cost and applying your 1.75 factor to it, you made an error of how much?

A. If it was exactly $30,000 it was 1.75 multiplied by $30,000.

Q. Which would be what? You are a better mathametician than I am.

A. That would be $52,500.

Q. Do you know of any other error in the figures that were reported to you by the Accounting Department?

A. No, sir.

Q. You said, I think, that when Bethlehem Shipbuilding Corporation was organized there was an estimating department formed; is that right?

A. Yes, sir.

Q. And I think Mr. Schulze was in charge of that estimating department?

A. Yes, sir.

Q. Were his headquarters at Bethlehem?

A. Yes, sir.

Q. During the months of November and December, 1917, what was Schulze doing? Was he doing any estimating?

A. During those months he was trying to get his office prepared for handling estimates.

Q. You mean he was organizing his department?

A. Yes, sir.

Q. It was a new department?

A. Yes, sir.

Q. Do you know whether he was, in fact, doing any estimating during that period?

A. Probably on changes.

Q. Probably on changes?

A. Yes, sir.

Q. On requisition ships?

A. And navy ships.

Q. Was he doing any estimating on new work?

A. No, sir.

Q. Particularly, did he do any estimating in connection with the Emergency Fleet ships?

A. No, sir.

Q. Except possibly in connection with changes and extras on requisition boats?

A. Yes, sir.

Q. When did the Estimating Department under Schulze first undertake any estimates for new boats to be built?

A. I think the first estimates that were prepared were on the troop ships.

Q. And when was that?

A. Oh, I don't recall exactly. It was several months later.

Q. Is that the contract for six troop ships to be built at Sparrows Point?

A. Yes, sir.

Q. I call your attention to a letter or a memorandum, which appears at page 494 of the Documentary Evidence, which was offered at the last trial as Exhibit G-6, in which it appears that the contract for those ships was awarded by the Fleet Corporation on October 9, 1918. Does that enable you to fix approximately the date when Schulze and his department made their estimates?

A. That does not fix it in my mind, because that was a rather involved situation. The estimate was first prepared for the construction of twenty troop ships to be built at a new plant to be erected on the West Coast and the original estimate was based upon construction on the West Coast, and, while this letter is dated October 9th and refers to Sparrows Point, it might have been several months prior to October when the original estimate was prepared.

Q. You would say it was some time during the middle or the latter part of 1918?

A. If it is important you can get it accurately.

Q. All right. But up until that time, as I understand it, Schulze and his Estimating Department had made no estimates for new ships to be constructed; is that right?

A. Yes, sir.

Q. And what estimating they were doing was on the cost of changes and extras on requisition ships and navy ships?

A. That is my recollection.

Q. Yesterday Government counsel called your attention to your letter to the Fleet Corporation of April 18, 1918, Exhibit G-132, and particularly to your proposal to construct three cargo vessels of about 4800 tons dead weight, to be built at the Moore plant?

A. Yes, sir.

Q. You say in that letter: "The price, however, to be determined after we have had an opportunity to prepare plans and specifications and estimates of cost." Why was it necessary to await the preparation of plans and estimates before making an estimate of cost on those 4800-ton boats, if you had your chart, as you say you had, from which you could take the approximate cost of any type or size of boat?

A. My recollection on that particular item is very hazy and I cannot state just definitely why that was, but we had no corresponding vessels of 4800 tons and just where the 4800 tons came from is not clear. The only explanation that I can give for that is that it must have been contemplated that it would have

been some special type of vessel and not of the standard.

Q. Did you ever build those boats?

A. No, sir.

Q. Had you ever built any 4800-ton cargo boats?

A. I think not.

Q. I notice that in every other case your proposal, not only in that letter but in every other letter where you made proposals, your proposal says that the boat to be constructed is to be a duplicate of some other boat of the same size, which you either had constructed or were constructing in one of your yards; is that correct?

A. Yes, sir.

Q. Whereas in the case of the 4800-ton boats you had no such duplicate?

A. That is right.

Q. Upon which to submit a proposal?

A. Yes, sir.

Q. And of course, therefore, no plans and specifications?

A. No, sir.

Q. Now I want to ask you a little bit more fully than Mr. Brown did how you and Mr. Powell arrived at the estimates of cost which appear in your proposal of December 19, 1917, G-109. The letter says that the figures are based upon the cost of a 10,000-ton vessel and you said that was according to your recollection.

A. Yes, sir.

Q. And that was the figure which you carried in your mind as a figure that you developed in your graph which you had in Bethlehem?

A. Yes, sir.

Q. $2,000,000, or $200 a ton?

A. Yes, sir.

Q. For an East Coast tanker of 10,000 tons?

A. Yes, sir.

Q. And you have explained how you arrived at your allowance of five per cent. to represent the additional cost of a West Coast tanker of the same size?

A. Yes, sir.

Q. And I think you explained your reason for submitting an average price for East and West Coast vessels?

A. Yes, sir.

Q. Because that had been your practice with the Navy?

A. Yes, sir.

Q. That was your reason, was it not, that the Navy made no distinction between the cost on an East Coast yard and the cost on a West Coast yard; is that right? I mean your price to the Navy was the same regardless of whether you were building destroyers on the East Coast or on the West Coast?

A. Yes, sir.

Q. It was an average price?

A. Yes, sir.

Q. And you assumed that the Fleet Corporation would follow that policy and hold you to the same price on the West Coast as on the East Coast?

A. Yes, sir.

Q. And that was your reason for submitting a price that was an average between the two?

A. Yes, sir.

Q. If you take five boats, 10,000-ton tankers, on the West Coast, which is what you were proposing, and three 10,000-ton tankers on the East Coast, and you take the West Coast boats at $210 a ton and the

East Coast boats at $200 a ton, you will get an average of $206 a ton; is not that right?

A. Yes, sir.

Q. And that, as I understand it, is the figure which you had developed from your cost which you developed in Bethlehem in connection with the preparation of this chart?

A. Yes, sir.

Q. Now I observe, however, that the price which Powell quoted, instead of being $206 a ton for a 10,000-ton tanker, is in round figures $216 a ton, or $10 a ton more?

A. Yes, sir.

Q. Can you tell us how that difference is accounted for? I mean if you started with your base of $206, how did you arrive or how did Powell arrive at a price of $216?

A. By adding $10 a ton to it.

Q. Can you tell us now why he added $10 a ton?

A. The only reason that I know, that he did not think the price was high enough, or that there were other conditions that he had in mind that I did not have in mind, and he was the man to finally determine what was going to be done.

MR. BROWN: Mr. Brown, if I may interrupt you, I do not think the Master wants you to guess. I think it is perfectly proper for you to state if Mr. Powell stated his reasons for doing this, but I do not think you should be permitted to speculate as to what Mr. Powell might have had in his mind.

BY MR. EVANS:

Q. Have you any definite recollection as to how that $10 a ton came into the picture?

A. No.

Q. Can you tell us whether it was the result of Mr. Powell developing entirely new costs of his own?

MR. BROWN: He has said he has no recollection. I do not think you should talk about putting words in the mouth of the witness. Go ahead, I do not object to it, but there are some limits even on cross examination.

BY MR. EVANS:

Q. Can you tell us whether it was the result of Mr. Powell developing an entirely new figure of his own?

A. You mean total figure?

Q. Yes, total figure.

A. A total figure of his own, yes.

Q. I am asking you whether it was the result of Mr. Powell putting down certain figures and developing an entirely new cost figure of his own?

A. He took the figures that I gave him and added $10 a ton to it.

Q. Yes, that is what I thought. In other words, he did not do, or attempt to do, what you had already done? He started with your figure, and, for some reason which you cannot recall, added $10 a ton?

A. Yes, sir.

Q. To your figures?

A. Yes, sir.

Q. But it was your figure which was the basis?

A. Yes, sir.

Q. This letter was not written in Washington, was it, this letter of December 19th?

A. No.

Q. Don't you recall that Mr. Powell said that he went to the Harlan plant?

A. Yes, sir.

Q. And wrote that letter the next day?

A. Yes, sir.

Q. Were you with him when he wrote the letter?

A. No, sir.

Q. Can you recall whether this breakdown to show the cost per ton was something that was discussed between you and Powell at your conference on the evening of December 18th, or whether that was something that Powell may have put in the letter when he went to Wilmington and dictated it at the Bethlehem office?

A. No, Mr. Powell made that breakdown while he was in Washington.

Q. While he was in Washington?

A. Yes, sir.

Q. So, then, you were familiar with his breakdown?

A. Yes, sir.

Q. I think you said that it was an arbitrary breakdown?

A. Yes, sir.

Q. Of the total cost figure?

A. Yes, sir.

Q. And you have told us how you arrived at the total cost figure?

A. Yes, sir.

Q. You said that you did not agree with him as to the allowance for Administrative, Selling and General Expense?

A. Yes, sir.

Q. Did you think that was too high or too low?

A. I thought that was too high.

Q. Did you agree with him as to the total cost being a reasonable figure?

A. Yes, sir.

Q. Therefore, if you agreed with him as to the total cost, but felt that his allowance for Administrative, Selling and General Expense was too high, then by the same token you must have thought that his allowance for Labor, Materials and Operating Expense was too low?

A. That would be the assumption, yes, sir.

Q. Is not that a fact?

A. Yes, sir, that is a fact.

Q. In other words, you did not disagree with him that the estimate of total cost which he submitted was a reasonable estimate, but you said, "If you are going to break that estimate down into so much for Labor, materials and Operating, so much for A. S. and G., etc., in the first place I think it is a mistake to do it, and in the second place if you are going to do it you haven't got your proportions in proper line."

MR. BROWN: Can he not remember what to say without your telling him every time? (To the witness) Will you accept that explanation which has been made for you by counsel?

BY MR. EVANS:

Q. Mr. Brown, will you answer my question, please?

MR. BROWN: Was it a question? I did not know that. (To the witness) That explanation is acceptable and relieves you of a lot of thinking, does it not, Mr. Brown?

MR. EVANS: Mr. Mason, I object to this. If there is any impropriety in my examination, let Mr. Brown object.

THE MASTER: I think it would be better to

make your objections, Mr. Brown, and I will rule on them as best I can.

BY MR. EVANS:

Q. We will withdraw that question and I will ask you what your criticism was of Powell's breakdown.

A. My criticism principally of Powell's breakdown was that he had an allowance in there of entirely too much in the division on the A. S. and G. His figures, of course, did not agree with my figures, because he had changed them and added to it, and I did not think it was good policy to make any breakdown, because I did not think that it meant anything to anybody.

Q. Did you think that his estimate of $2,181,600, as an average between the East and West Coast cost for a 10,100-ton tank vessel, was reasonable?

A. I said any figure within five or ten per cent. of what we had there would be reasonable; what we had in the chart.

Q. You have not told us yet how you arrived at your estimate for these seagoing tugs. Were they covered by your chart?

A. No, sir.

Q. Could you use your chart for that purpose?

A. No, sir.

Q. That was an entirely different type of ship, was it?

A. Yes, sir.

Q. Tell us how you arrived at that figure of $300,000 for seagoing tugs.

A. After obtaining the particulars of the tugs which the Shipping Board contemplated building, and which consisted merely of the dimensions of the tugs and the horsepower, we compared those with

some tugs that Mr. Powell had had experience with on the return cost at Cramp's Shipyard and some at Fore River, which had been built some years previous.

Q. Did you have those figures before you, or did you recall them?

A. Oh, no, we got the figures after we were given e particulars.

Q. What?

A. We obtained the total cost of those boats after we had gotten the particulars from the Fleet Corporation.

Q. When was that?

A. After we had been asked to put a bid in.

Q. That was on December 18th, was it not?

A. Oh, there was some talk, I think, of tugs before that, wasn't there?

Q. I am asking you for your recollection.

A. Well, I will tell you as nearly as I can get it. We either got the figures or had them some place, either had what the total costs of the tugs were or something of the kind, and all that was done was a comparison and a figure arrived at, which Mr. Powell submitted.

Q. You did not have any plans and specifications for those tugs?

A. No, sir.

Q. All you had, I think you said, was the over-all dimensions and horsepower?

A. Yes, sir.

Q. After you had submitted that proposal did you go back to Bethlehem? I do not mean right away.

A. Yes, sir.

Q. You were in Bethlehem between December 19th and January 3rd, were you not?

A. Yes, sir.

Q. And when you went back to Bethlehem, did you compare the prices which you had submitted in your proposal of December 19th, with the prices for those same types and sizes of vessels as you developed them on your graph that you had in Bethlehem?

A. Yes, sir.

Q. Did you take off a record of what the prices were for those particular types and sizes of vessels as developed from your graph?

A. Some time during that period, yes.

Q. What did you do with that memorandum? Did Mr. Powell have it?

A. It was prepared and given to Mr. Powell.

Q. It was prepared and given to Mr. Powell, so that when you went into your conference with the representatives of the Fleet Corporation on January 3, 1918, Mr. Powell had a memorandum showing what your chart prices were?

A. Yes, sir.

Q. Of the vessels which were included in your proposal of December 19th?

A. Yes, sir.

Q. You told us about Admiral Bowles and his experiences as a shipbuilder. What can you tell us about Mr. Radford and his experiences?

A. Mr. Radford was a graduate of Annapolis and took a post graduate course at the Massachusetts Institute of Technology, in Boston. He was then a naval constructor at the various Yards, or inspector, I should say, and I think he was at the Navy Department for some time. He resigned from the Navy Department and went into an industrial line and then

went with the Shipping Board, or Emergency Fleet Corporation, I don't know which you would call it.

Q. Was he regarded as a competent shipbuilder?

A. Yes, sir.

Q. Mr. Radford is still living, is he not?

A. So far as I know, yes, sir.

Q. He is located in New York, is he not?

A. I do not know, Sir.

Q. You recall that he testified at the last hearing?

A. Yes, sir.

Q. What other men were connected at that time with the contract or construction division of the Fleet Corporation, beside Bowles and Radford?

A. There was Mr. Coxe.

Q. Tell us who he was and what his qualifications were.

A. He was a graduate from the Naval Academy, also had a post graduate course. He was a naval constructor; resigned from the Navy, became a member of the firm of Coxe & Stevens in New York, Naval Architects, and was with the Fleet Corporation, and then went back to his firm in New York.

Q. That was after the War?

A. After the War.

Q. Do you know whether Mr. Coxe is still living?

A. I understand that he is. I do not know.

Q. Do you know whether he is, or has been until recently at least, in practice as a marine architect and engineer?

A. Up to the last that I heard, he has been in that business.

Q. Is he generally regarded as a competent man in his line?

A. He is.

Q. What other men were associated with the Fleet Corporation at that time?

A. There was a Mr. Theodore Ferris.

Q. Tell us about him.

A. He was a naval architect and a very successful one, located in New York; with the Fleet Corporation for a long period, and after the War went back in his own business in New York.

Q. Is Mr. Ferris still living?

A. So far as I know, he is.

Q. Do you know whether he is still in active practice?

A. He is.

Q. Where?

A. In New York.

Q. Is he regarded, and was he at that time regarded, as an able marine architect and engineer?

A. I should say he was regarded as one of the foremost in the country.

Q. Do you recall any other technical men who were connected with that department of the Fleet Corporation at that time?

A. No.

Q. Would you say that any one of those men was entirely competent to check your estimates of cost?

A. They were.

Q. Would you say that they were just as competent to check them as you were to make them?

A. They were.

Q. The Fleet Corporation was contracting with other Yards for tankers and cargo boats, was it not, about this same time?

A. They were contracting for many cargo boats,

but up to that time I do not think they had contracted for any tankers.

Q. They had taker over substantially the entire tonnage of the construction in the country, had they not?

A. Yes, sir.

Q. And in connection with that work they were periodically auditing costs at the several Yards, were they not?

A. I do not know.

Q. Don't you know that they were at Bethlehem?

A. The Shipping Board?

Q. Yes.

A. Not on requisition ships, no.

Q. Not on requisition ships?

A. No.

Q. You told us something about the conference which took place on January 3, 1918, between Admiral Bowles; Mr. Radford, Mr. Cuthell representing the Fleet Corporation, and you and Mr. Powell representing Bethlehem. Your relations with Admiral Bowles at that time were still friendly?

A. Yes, sir.

Q. And I think you told us yesterday that during your association with Admiral Bowles, particularly at the time that he was president of Fore River, he was entirely familiar with your method of working?

A. Yes, sir.

Q. And it had been his custom to supervise and check estimates that were made at the Fore River plant, had it not?

A. I don't know just what you mean by supervising and checking.

Q. What did he have to do with that?

A. What he had to do, after the estimates were prepared I would go in there and talk the matter over with him and show him in general what had been done and the way it had been done.

Q. So that he was familiar with it?

A. That was when we first started, and after while you get so you don't explain just how you do things to him.

Q. At any rate, he was familiar not only with your method of making estimates but with the estimates that had been made at Fore River?

A. Yes, sir.

Q. He criticized your estimates in your letter of December 19th as being too high, did he not?

A. Yes, sir.

Q. Did he ever suggest what he thought a proper figure would be for any of those boats at that meeting—except as he finally agreed on a figure, I mean?

MR. BROWN: Let us have that question—because I think it is a very important one—straightened out, if I may ask for it, because the witness has already testified, and I do not think he means to testify differently now, although I do not know, that Admiral Bowles never submitted any counter proposals whatsoever. I think the question, if you will read it, is misleading because the witness will not see exactly what is meant, because it indicates that Admiral Bowles did suggest the final prices, which is not true.

MR. EVANS: I did not mean any such suggestion. I will withdraw that question.

BY MR. EVANS:

Q. Admiral Bowles did object to the prices as originally submitted?

A. Yes, sir.

Q. And what did he say about them?

A. He said they were too high.

Q. Did he say anything else?

THE MASTER: Speaking now of the meeting of January 3rd?

MR. EVANS: Speaking of the meeting of January 3rd.

BY MR. EVANS:

Q. Particularly, did he say why they were too high or in what respect they were too high?

A. My recollection is that that is about the sum and substance of it, he just said they were too high.

Q. Did he suggest any figure which he thought would be a proper figure?

A. Not on those.

Q. He did on the stock ships?

A. Wait a minute. That is just what I was trying to get clear in my mind, between the two.

Q. We understand that on the stock ships he did suggest or had suggested a figure of $180 a ton?

A. Yes. Aside from that he did not suggest any figure.

BY MR. BROWN:

Q. Let us have that straightened out also. The figure of $180 which Admiral Bowles suggested, was a lump sum price for some of the stock ships; is that right?

A. That is correct.

BY MR. EVANS:

Q. I am talking about the vessels which are included in your proposal of December 19th, which does not include the stock ships?

A. Yes, sir.

Q. They were the vessels that were first under discussion in your conference of January 3rd, were they not?

A. Yes, sir.

Q. The stock ships came up later, at the conclusion of that conference?

A. Yes.

Q. Now I am asking you whether with respect to those vessels Admiral Bowles submitted any price of his own?

A. No, sir.

Q. Did he ask you how your estimates were made up?

A. No, sir.

Q. Did he ask you to justify your estimates in any way?

A. No, sir.

BY MR. BROWN:

Q. He just objected to them repeatedly and said they were too high?

A. Yes, sir.

Q. But did not ask you to justify them?

A. No, sir.

BY MR. EVANS:

Q. Until Powell finally came down to a figure which Bowles was willing to accept?

A. Well, I should put it this way; to a figure which Mr. Powell refused to go below.

Q. Well, then Bowles did accept it; is that right?

A. If you call his letter to Mr. Piez, his recommendation, an acceptance of them, yes.

Q. When you left the conference did you not understand that at the prices which Powell had finally worked down to had been accepted, at least so far as Bowles and Radford were concerned?

A. That was the agreed-upon prices, yes, sir.

BY MR. BROWN:

Q. In other words, as I understand you to testify, Admiral Bowles was forced to accept those prices because Mr. Powell would not go lower; is that correct?

MR. EVANS: I object to that question. That is not what he said.

MR. BROWN: I want to distinguish your testimony from Mr. Brown's, if possible, and I thought this would be an appropriate place to do it.

THE MASTER: That is what the Master will have to do, Mr. Brown. I do not think you need to assume that burden. I think it is perfectly clear.

BY THE MASTER:

Q. As I understand it, so you will see if I have distinguished it properly or not, Mr. Brown, there was at the January 3rd conference a discussion, in which the people whom you have named participated, concerning the figures for the vessels that were set forth in the proposal of December 19th, submitted by Mr. Powell; that is correct, is it not?

A. Yes, sir.

Q. And as to those figures for the different vessels that were mentioned in that letter, and speaking of those vessels only for the moment, Admiral Bowles objected to the figures and from time to time Mr. Powell reduced his figures until he reached a point below which he would not go?

A. That is right.

Q. And, in spite of further objections by Admiral Bowles, he did not go below that figure?

A. Yes, sir.

Q. And the conference stopped when that point was reached, in so far as further negotiations were concerned, and then, so far as you were concerned, you had no further discussion with Admiral Bowles with reference to further reductions; is that so?

A. That is right.

Q. That is my understanding of it. May I ask, for my own information, whether the letter of December 19th was before the conference in physical form during this discussion? Do you recall whether Admiral Bowles or whether Mr. Powell had before you for discussion the proposal letter of December 19th, when you were together on January 3rd?

A. Mr. Powell had it. I do not recall whether the other side had theirs or not.

Q. Was the letter itself made the basis for this discussion, or was it merely a verbal discussion concerning the figures that had been submitted, as you recall it?

A. I should say it centered around the figures that had been submitted, taken from the letter.

Q. And were they the total figures for the vessels, or was the breakdown that Mr. Powell put in the letter of December 19th a matter also of discussion?

A. I recall no discussion upon the breakdown, only on the total price.

BY MR. EVANS:

Q. You said at the conclusion of the negotiations Admiral Bowles asked you whether you thought those prices were fair and you told him, I think, that they were about as fair as you could arrive at under the circumstances?

A. To that effect.

Q. Did you honestly believe that they were as fair as could be arrived at under the circumstances?

A. I did.

Q. Did you feel that your method of estimating the approximate cost of these ships was as accurate a method as you could have used under the prevailing circumstances?

A. I did.

Q. Did you feel that the prices that you had derived as a result of the use of that method gave you a reasonable estimate of cost?

A. It gave me an estimate within a reasonable range, or within a range of the reasonable probable cost.

Q. About as accurate as could be expected under the uncertain conditions prevailing at the time?

A. Yes, sir.

Q. The prices at which the contract or contracts were awarded for the vessels which are included in your proposal of December 19th are substantially the prices which were developed from your chart and which you had given to Powell in preparation for the conference of January 3rd; is that right?

A. Yes, sir.

Q. With the exception of the ten per cent. which you have allowed there for contingencies, which as you have said included this allowance for hotel equipment, armed guard and war zone equipment, was there any contingent allowance in your figures?

A. In the ten per cent.?

Q. No, outside of that?

A. No, sir.

Q. The rest of the factors were factors that were developed, based upon your knowledge and experience and represented as accurately as you could

forecast the approximate cost of those vessels to be built during the estimated contract period; is that right?

A. Yes, sir.

Q. In other words, what I am driving at, is there any hidden gravy in there?

A. No, sir.

Q. Have you made a comparison of the cost of the vessels built by Bethlehem under what we call the Contract Ship Program, with the cost of vessels built for the Fleet Corporation by yards other than Bethlehem?

A. Yes, sir.

Q. And you tabulated the result of that comparison in an exhibit that you prepared?

A. Yes, sir.

Q. Which was offered at the last trial?

A. Yes, sir.

MR. EVANS: I ask the Master to mark for identification the exhibit which was offered in evidence at the last hearing as B-3, being a statement showing contract price, contract D. W. T., attained D. W. T., number of vessels completed and final price to the Government for vessels built under direct contracts by builders other than Bethlehem Shipbuilding Corporation, and may it be stated on the record that that is an exhibit which has been supplied to Bethlehem by the Fleet Corporation.

THE MASTER: It may so far as I am concerned.

MR. BROWN: I have no objection to its being offered even at this point, if Mr. Evans wishes.

MR. EVANS: That being so, I will offer it in evidence.

THE MASTER: Very well, I will mark it.

MR. BROWN: We admit that that exhibit was furnished to Bethlehem counsel by the Government.

BY MR. EVANS:

Q. Was your comparison based on the information which was supplied in this exhibit, which has been offered as B-3?

MR. BROWN: May I add a note to my admission on the record, that Exhibit B-3 was furnished by the Government to Bethlehem counsel as one of the documents to be exchanged for the chart which has been offered in evidence.

MR. EVANS: Do you not mean the only document which was to be exchanged for the chart?

MR. BROWN: I do not know whether there were others or not.

MR. EVANS: Do you not mean that that is the one document which was furnished by the Government in exchange for all of the documents which have been furnished to the Government, of which the chart is only one? Not that it makes any difference, but I do not want the Master to have any idea that the Government was selling its birthright for a mess of pottage, because they did not do any such thing.

THE MASTER: As I understand it, coun-

sel are going to ask the Master to value the relative advantage each got by the exchange of documents, and I do not think the Master proposes to do that.

MR. BROWN: I would merely like to note on the record, as long as all the rest of this is taken down, that the Government furnished Bethlehem with everything which Bethlehem had requested, in exchange for which Bethlehem, among other things, was to provide us with all the cost data which it had available and used in connection with its estimates.

MR. EVANS: If the Master is at all interested in that, we will let it go at that.

(Question read, as follows: "Was your comparison based on the information which was supplied in this exhibit, which has been offered as B-3?")

A. It was.

BY MR. EVANS:

Q. Do you find any direct comparison between any of the vessels which were built by Bethlehem and any vessels of similar design and of approximately the same tonnage, built by other yards?

A. Yes, sir.

Q. Give us the first direct comparison which you have.

A. There were tankers at the Baltimore Drydock Company of approximately the same size that were built at the Sparrows Point Company. These Yards are both located within eight miles of each other.

Q. What size boats were they?

A. They were approximately 10,100-ton tankers.

Q. Were the specifications the same?

A. No, sir, the Baltimore Drydock Company boats, as I recall it, were fitted with turbine machinery and the Sparrows Point with reciprocating machinery.

Q. What difference does that make in cost? I mean which is the higher?

A. The reciprocating machinery cost will be higher. It will likewise have an effect upon the dead weight of the vessel when it comes to the final comparison.

Q. Was that the only substantial difference?

A. I do not recall about the boilers, whether they both were Scotch boilers or not. I would have to look that up.

Q. Does your exhibit that is here that you made up tell you?

A. Yes, I can tell you exactly what it is.

Q. All right, look at it.

A. That was about the only substantial difference.

Q. And the effect of that, as I understand it, was the Bethlehem boats were of a type more expensive to build than the Baltimore Dry Dock?

A. Yes, sir.

Q. In making your comparison, did you make any allowance for that difference, or did you make a comparison on the actual cost of construction?

A. On the actual cost of construction.

Q. Now what was the comparison in cost. I mean, cost to the Fleet Corporation?

A. Total dead weight?

Q. Any way you want to give it. Total dead weight, I think, would be the most accurate.

A. The Baltimore Dry Dock Company tankers cost per ton dead weight $264.52 a ton.

Q. Now when you say that is what it cost, you mean that is what the Fleet Corporation has reported to Bethlehem that it paid to the Baltimore Dry Dock Company for those boats?

A. On all of these costs it is the cost to the Fleet Corporation.

Q. Now what is the price that Bethlehem is asking for its 10,100 ton tankers at Sparrow's Point under the terms of the contract?

A. Well, the Baltimore Dry Dock Company tankers were the contracts dated 2-28-18.

Q. Well, you have given us the price on the Baltimore Dry Dock?

A. I know, but we have three contracts with the Bethlehem, but if you want it on the total average, then—

MR. BROWN: Mr. Master, may I have an objection and exception to all the testimony relating to this Exhibit?

THE MASTER: Yes.

THE WITNESS: The Bethlehem price on tankers completed around about the same period for the Shipping Board was $222.17.

BY MR. EVANS:

Q. Now the comparison there is between vessels of substantially the same type with the exceptions that you have given us?

A. Yes, sir.

Q. Substantially the same size and construction, over substantially the same period of time, is that correct?

A. That would be substantially so.

THE MASTER: The Sparrow's Point plant, by Bethlehem?

BY MR. EVANS:

Q. At the Sparrow's Point plant by Bethlehem, and at the Baltimore Dry Dock plant, which is in the same district?

A. Yes, sir.

Q. Now what tankers are they? What are the Sparrow's Point Tankers that you have given us the cost on? What contract? Can you give it to us by contract number?

A. Yes, sir, that is what I am trying to give you.

Q. You have given us a figure of $222.17 per ton; what contract is that?

A. That is contract 179.

Q. That is your first contract?

A. Yes, sir.

Q. Now when you say the cost is $222.17, are you including in that the fixed fee and one-half of the savings which Bethlehem is claiming?

A. Yes, sir.

Q. In other words, that $222.17 is the amount which Bethlehem is here asking to be paid?

A. Yes, sir.

Q. Under the contracts?

A. Yes, sir.

Q. Now have you any other comparison?

A. Yes, sir.

Q. Of boats of the same type and size?

A. We have it on the West Coast.

Q. Well, have you any other comparison with the Baltimore Dry Docks?

A. Not on contracts with the Baltimore Dry Docks that were made prior to the Armistice.

Q. Nothing that would afford you a fair comparison?

A. No, sir.

Q. Now have you any other comparisons with other yards which you think are fair comparison?

A. Well, we have on the West Coast a direct comparison between the Union plant and the Moore Shipbuilding Company.

Q. What was the Moore Shipbuilding Company? Did that have anything to do with the Moore yard—Bethlehem's Moore yard?

A. No, sir.

Q. Where was the Moore Shipbuilding Company—on San Francisco Bay?

A. On the San Francisco Bay.

Q. In the same district as your Union and Alameda are?

A. Yes.

Q. What is that comparison? Give us the size and type of boats and contract number and the cost?

A. On the contracts that were made prior to the Armistice—it is kind of faded here, the contract number. Is it necessary to have the contract number?

Q. Well, can you give us your own contract numbers?

A. This looks like 177 and 301.

BY THE MASTER:

Q. What is the page you are referring to, Mr. Brown, on Exhibit B-4?

A. Page 18.

BY MR. EVANS:

Q. Have you got 177 separately—contract 177 separately?

A. Yes, I have that separate, and I have the other, and I have the average.

Q. All right. Now what was contract 177? What did that cover?

A. That covered a 10,100 ton tanker.

Q. How many?

A. Twelve.

Q. Now what boats have you compared with those tankers? What boats that go to the Moore yard to compare with them?

A. Well, you will have to take an additional six at the Union to make it a fair comparison with the Moore against their nine.

Q. Well, you just tell us what you have down there?

A. All right. Well, at the Moore plant on contracts which were made prior to the Armistice there were tankers of 9,850 tons dead weight and a cost of $262.13.

The Bethlehem similar boats of 10,100 tons dead weight and the price per dead weight ton is $224.69, or 67 cents—that is kind of dim on this print here, but I think it would be a comparison if you take the dollars and leave the cents off.

Q. All right; that is close enough. Now is that comparison between vessels of substantially the same type, or are there any differences in cost of construction?

A. They are substantially the same type.

Q. And that shows Bethlehem's cost, or their asking price, substantially lower than was paid to Moore?

A. Yes, even allowing for the slight difference in the size of the boats, or total dead weight, the

smaller boat would cost a trifle more per ton dead weight than the larger boat.

THE MASTER: Mr. Evans, may I ask the Government's counsel whether there is any dispute as to the figures used here as a basis of comparison?

MR. BROWN: As to the Exhibit?

THE MASTER: Whether the testimony given here for the record properly shows the comparison, or whether the Government's position is simply the comparison is irrelevant to the issues in the case?

MR. BROWN: Yes, Mr. Master; we take the position primarily that the comparison is entirely irrelevant to the Government's position in this case, and with respect to your other question, I think we would take the position if it were relevant it is probably not based on the proper comparison, and I think that would be the subject for examination by us as to the propriety of this comparison that he is making.

THE MASTER: What I wanted to know, so that I can consider it from—not only while the testimony is being given, but as to whether or not other testimony should be given to meet it of any value, that is, whether there is a dispute that the figures given here are accurate and afford a proper and usable comparative basis. If you object to that, then that becomes a question of fact as to which it may be necessary to have other evidence than Mr. Brown's, but if you concede that the figures are correct and it is simply a question of the propriety of

using them on the issues of this case, it is a totally different proposition.

MR. BROWN: We concede no figures other than those contained in Exhibit B-3, and we don't intend at the present time to go into this phase of the case, with respect to each contract mentioned by Mr. Brown, as it would involve a mass of testimony and be merely diverting to the real issues involved in this case.

THE MASTER: Then for the purpose of the case, do I understand that you concede the figures used by Mr. Brown for the costs under the Bethlehem contracts are not going to be disputed?

MR. BROWN: As to figures appearing in Exhibit B-3.

THE MASTER: But the figures, Exhibit B-3, as I understand, are the figures you furnished of amounts paid by the Fleet Corporation to other builders than Bethlehem?

MR. BROWN: Correct.

THE MASTER: As I understand, Mr. Brown, he is using those figures which you concede as the amount you paid for dead weight tons for somewhat similar vessels, the figures that you paid Bethlehem under their contracts for their boats of an allegedly similar type. Now, then, do you dispute that the dead weight per ton figure used by Mr. Brown as the amount which represents the claim of Bethlehem is an incorrect figure?

MR. BROWN: I don't think so, if it is based on Exhibit B-3.

MR. EVANS: It is based on Exhibit A.

BY MR. EVANS:

Q. Mr. Brown, when you spoke about the cost of Bethlehem Ship, by which you say you mean the amount which they are asking under the contract, where did you get those figures? From the conceded costs under the stipulations which is offered here as Exhibit A? Do you understand my question? You say that the amount which Bethlehem is asking under those contracts amounts to so much per ton. Where did you get that figure?

A. I got those figures from Mr. Geiss.

Q. From Mr. Geiss?

A. Yes, sir.

Q. Now you don't know, then, where Mr. Geiss took those figures from, do you?

A. No.

Q. You don't know whether they are the figures which appear in the stipulation of fact?

A. That is right.

Q. The conceded figures?

A. Yes.

THE MASTER: Mr. Evans, I was just inquiring to see whether or not it was necessary to go into the facts from this witness through the means you are adopting now, or whether if in the Exhibits which are or will be in evidence the comparative figures appear, whether that couldn't be tabulated by somebody who is a mere tabulating machine and let us have the result of them for the record. If the question is simply one of relevancy and the testimony we are getting now is merely a matter of either mathematics or the reading from Exhibits which

are already in, we are wasting a lot of time. That is what I had in mind.

MR. EVANS: Well, that is true, but here is the proposition: what you are suggesting being done is being done here because in addition to these, what we call direct comparison, he has a very elaborate Exhibit here with a comparison of the entire ship program, by separating all vessels into separate classes, making proper allowances by reason of difference in size or type, and reducing them to a common standard and making a comparison according to those standards. Now that we offer for what it is worth.

THE MASTER: All right.

MR. EVANS: Now as to your question, if there is any question about it—it wasn't raised at the last trial—

THE MASTER: I was raising it myself.

MR. EVANS: If there is any question about that, when Mr. Brown speaks about Bethlehem's cost, he is speaking about the conceded amount which we are entitled to, if we are entitled to our contract price. Do I make that clear?

THE MASTER: That is what I understood. Well, if Mr. Brown is needed to develop certain comparatives from these Exhibits, go right ahead.

BY MR. EVANS:

Q. Now have you given as the only, what I may term true comparison, between vessels of substantially the same type and size?

A. Yes, sir.

Q. Now in addition to that, did you make a com-

parison of all of the boats which were built by Bethlehem with all of the boats which were built by yards other than Bethlehem?

A. Yes, sir.

Q. Now how did you make that comparison? First, how did you classify your boat?

THE MASTER: Now, Mr. Evans, may I ask for my own information, I don't know what is in this Exhibit, whether the comparison which is now to be made relates to any vessels built by Bethlehem other than those for which the claim is made here?

MR. EVANS: Will you answer that question Mr. Brown?

BY THE MASTER:

Q. Is your comparison which you are now proposing to give us based upon any vessels built by Bethlehem for the Fleet Corporation other than those that are covered by the contracts which are in dispute here?

A. They are not.

Q. So that what you are doing is making a comparison between the vessels that are built by Bethlehem for which the contract price is claimed in these cases that are now under litigation and the ships built by all other builders during substantially the same time who had contracts with the Fleet Corporation?

A. Yes, sir, that is right.

BY MR. BROWN:

Q. May I ask, does that include the stock ships also, your Bethlehem ships?

A. It only—it includes the ships that were constructed for.

Q. And that includes the stock ships?

A. Because the stock ships became contract ships.

BY THE MASTER:

Q. The answer is it does include the stock ships?

A. Yes, sir, that was my understanding.

Q. It includes all Bethlehem contracts which are a matter of consideration in this case?

A. Yes, sir.

MR. BROWN: Mr. Master, may I also ask if it is not a fact Mr. Brown's comparison is not based on any analysis of the wage rate indications with these ships built by other builders which are used for comparative purposes, or of material unit costs in construction of the ships.

BY MR. BROWN:

Q. You never went into any detail with such cost to determine the price prevailing in connection with the material and labor for such comparative ships?

A. I did not.

BY THE MASTER:

Q. You took the amounts paid, as I understand, by the Fleet Corporation to these other builders regardless of what went into those amounts? You did not analyze the figures representing these figures?

A. During the construction of this program, the prices paid by one builder were the same as prices paid by another builder.

Q. You are talking now of labor?

A. The same as to material.

BY MR. EVANS:

Q. Mr. Brown, the question is, did you take the cost of construction as the basis of your comparison, or did you take the price that was paid?

A. I took the prices that were paid by the other builders.

BY THE MASTER:

Q. To the other builders, you mean?

A. To the other builders, as comparison to the price Bethlehem was asking.

MR. BROWN: If this is an appropriate place, I think I have a right to examine him as to his basis.

BY MR. BROWN:

Q. And in this comparison, Mr. Brown, as I understand it, you have assumed that the price of material used in connection with your comparative ship would be the same unit price used in construction of the Bethlehem ship?

A. I did not interest myself in that phase of it at all.

Q. And you have therefore assumed, as I have suggested?

A. No, sir; I didn't assume anything. It isn't a question of cost.

THE MASTER: As I understand it, Mr. Brown, this is not an attempt to show the amount of the benefit to one or the other shipbuilders growing out of their cost. It is a demonstration of the amount that was paid to other builders for somewhat similar or identical ships by the Fleet Corporation during the same time they were paying to Bethlehem on contracts, or contracted to pay to Bethlehem the sum that is in dispute.

MR. BROWN: Correct.

THE MASTER: And take that comparison

without regard to the cost to other builders of material or anything.

MR. BROWN: That is correct.

BY MR. EVANS:

Q. Now in making this comparison of the entire program, how did you divide your—

MR. HALLETT: May I ask one question?

BY MR. HALLETT:

Q. You had no information as to what the Government paid the builder under the terms of the contract and whether or not those payments allowed anything for additional plant or anything of that sort, to the respective builder, did you?

A. No.

Q. And in your comparison of cost you did not treat any of the amount of money which had been advanced by the United States to Bethlehem for plant extensions as part of the cost of ships?

A. No such items that you are mentioning were included in the figures of the cost of ship which you gave as the price of the ship and the comparison here.

THE MASTER: Well, as I understand it, what Mr. Brown had to make the comparison were the figures given by the Fleet Corporation in Exhibit B-3.

MR. EVANS: Yes, exactly.

THE MASTER: And whatever they include is included, and whatever was excluded was excluded, and he is making a comparison simply and solely on the per ton basis as figured out from the figures given by the Fleet Corporation which are on this record now in Exhibit B-3.

MR. EVANS: Exactly.

THE MASTER: And the thing he is now going to do, having given his direct comparison in the two instances where he could find similar ships, he is now going to attempt to show, for what it is worth, a general comparison of the whole of the shipbuilding program in which Bethlehem participated in one certain group, and another builders participating in another group of ships and make as best he can certain differentials and try to arrive at the basis, whatever value it has. I doubt that it is going to be very helpful in reaching a correct comparison, but we will take it for what it is worth.

MR. EVANS: Exactly.

BY MR. EVANS:

Q. Now Mr. Brown, I really don't want to put answers in your mouth, but we really think I can save a little time. Now for the purpose of making this comparison, you first divided your ships into certain groups, did you not?

A. Yes, sir.

Q. You included only steel ships; you didn't include any wooden ship in this, did you?

A. No, this was only a steel ship program.

Q. You divided all those ships into groups?

A. Yes, sir.

Q. And then how did you reduce the vessels in any particular group to a common standard of value? What I mean, did you make approximate allowances for differences in type of construction?

A. Not on this comparison first, no.

Q. Well, did you ultimately?

A. Ultimately, yes.

Q. Then as I understand it, you first divided all

of the ships which you are going to compare into appropriate groups?

A. Yes.

Q. Now that doesn't mean that every vessel in any one group is identically the same with each other vessel in that group?

A. That is quite right.

Q. You group them according to certain characteristics and you get into one group a lot of vessels which are more or less alike, is that right?

A. More or less alike and within a reasonable range of size.

Q. Now then you still have some differences between different vessels which you put in the same group?

A. Yes, sir.

Q. Now in order to get a common basis of the value for purposes of comparison, how do you make proper allowance or adjustment to take care of this difference within the group?

A. You take the total prices on each contract within this group and the dead weight, recorded dead weight. Those are all summed and divided by the total dead weight, giving you an average dead weight. It also gives you an average price.

Q. Average price for vessels of that group?

A. Both as to the total price and price per ton dead weight.

Q. Adjusted to—

A. No adjustment.

Q. Now, how do you make your adjustment?

A. Well, after that whole business is divided and classified, then you make your adjustments by taking—

BY THE MASTER:

Q. Did you use the chart to make the adjustment, Mr. Brown?

A. No, sir; used the tabulation to make the adjustment, by taking under the various contracts, the number of the vessels of them particularly, the type of machinery and the number of vessels that have been fitted with turbines, number with reciprocating engine, number with boilers and so forth and got an average of that group. The same way through with all other groups, the same way with Bethlehem vessels. Then that gave you the physical characteristic.

Q. Of each group?

A. Of each group. Then I made an allowance in money, converting that into money, and brought that all up to a standard.

Q. On a per dead weight ton?

A. Some had to be reduced to dead weight ton, some were on the total dollars and so forth, but eventually they were all molded into one proposition. Then we took the different classes under the different groups and we got a sum total, divided by the number of ships to get the average per ship. Now, if Bethlehem had built some 7,500 ton ships and they were compared with a class of 7,500 ton ships of the other people, if Bethlehem's prices were higher, that would be added to the Bethlehem; if the other people were higher, that would be added to the other people, so that you brought them to a common specification. In other words, if one had reciprocating engine and the other had turbines in, you would bring the turbine cost up to the reciprocating cost, or vice versa. That was done throughout the whole group, and which is a comparison, so that finally you obtained a price adjustment which would indi-

cate which of the ships would cost the more money, whether Bethlehem or whether the other builders, or which ships were of the higher specification, in other words. Now the amounts that are indicated may not be absolutely accurate, but it shows the trend. Do you understand it?

Q. I understand what you have said. I am curious to see what your result is going to be.

BY MR. EVANS:

Q. Well, all right, if the Master understands what you said, that is the important thing. Now what was your result?

A. The result was that Bethlehem's program, on its total program as compared with the corresponding groups of the other builders—now you must understand Bethlehem built no 3,000 ton ship, so they are out of it, but they did build 7,400 ton ship, which are compared with 7,500-ton ship, and they would be reduced to the dead weight ton. Now that shows the Bethlehem ship would have on this basis of comparison, approximately $800,000 more than the other builder's ship.

BY THE MASTER:

Q. You mean as a sum total?

A. The sum total, which I say, is absolutely negligible.

Q. I don't know how valuable that result may be, but to get a further comparison, may I ask you this question, whether the $800,000 difference which you speak of is comparing Bethlehem with all of the other ships built by all of the other builders? You included all of the other builders in that total?

A. All of the other builders, ships of that type and with which the Bethlehem were conformable.

Q. And you excluded from the ship built by other

builders ships that were not conformable with the ships that Bethlehem was building?

A. Yes, sir.

Q. And did you attempt to break down your total figure for all of these builders by comparing the individual builders other than the two that you have heretofore given, or substantial identical ship with the ships that Bethlehem was building of the same type?

A. We took no one individual builder, but took them all.

Q. Did you make comparison of the total number of ships of the group type that Bethlehem was building with the total number of ships of the same group type that each one of the other builders were building?

A. Collectively.

Q. You simply collected them all?

A. Yes, sir.

Q. Made no individual comparison?

A. No, sir.

BY MR. EVANS:

Q. I don't know whether this is clear. You said something about the cost of the Bethlehem boats being $800,000 more?

A. I meant that there was $800,000 in favor of Bethlehem.

Q. You mean to say that the type of vessel which Bethlehem built was a more expensive type of vessel to construct than the vessels built by other yards which you used as a comparison, is that what you mean?

THE MASTER: That isn't what he said. The problem is a difficult one to make clear and you are talking in very general terms when you

are speaking of the advantages pro and con because of the differential that Mr. Brown has said he used, and one of the differentials is what the Fleet Corporation got for its money, whether it got a higher type of vessel from Bethlehem or from the other builder.

MR. EVANS: That is exactly it.

THE MASTER: That is what you are going to find a difficult factor to get in this result, I believe.

BY MR. EVANS:

Q. I want to find out which way that factor was?

A. Why, the net increase of other builders over Bethlehem's price will be $885,000.

Q. Now that doesn't mean anything to us at all, Mr. Brown. What do you mean by net increase of Bethlehem over other builders?

THE MASTER: No, he didn't say that. He said net increase of the other builders over Bethlehem.

BY MR. EVANS:

Q. Well, that still doesn't mean anything?

A. I mean to say the other builders would have to expend $885,000 to bring their ships up to Bethlehem's specifications.

BY MR. HALLETT:

Q. Was that on the total program, or on one ship?

A. No, that is compared with the total program as built by Bethlehem and the equalizing amount paid by the other people.

Q. In the same group?

A. Taking the groups collectively.

Q. Do you only refer to the 7500 ton group or all of the group?

A. All of the group.

BY MR. EVANS:

Q. To make one more stab at it to get it clear in my mind, you mean by that, in point of value the ships built by other yards which you used for the purpose of comparison were worth less—I don't mean worth less, but worth less than the corresponding ships of the Bethlehem, with which you compared, is that what you mean?

A. I mean Bethlehem's ships are worth $885,000 more than the other ships.

Q. Because they are more expensively constructed?

A. Yes.

Q. Than the vessel with which you made your comparison?

A. That is what I am trying to say.

THE MASTER: Now there is another factor, Mr. Evans, that must be taken into consideration, and that is, as I understand it, the item which goes to make up all the items which go to make up that $885,000 difference for the cost to Bethlehem of the things that went into the Bethlehem ship. Now whether or not the other builders could have gotten them at a greater or less price is a matter that is left up in the air. So that it will be clear, as I understand it from this witness, the greater value which he attributes to the Bethlehem ship over and above the total of the other ships built by other builders is based upon the fact that it cost Bethlehem to put those additional or bet-

ter things into it, because that is the impression I have gotten from it.

THE WITNESS: No, that isn't right.

BY THE MASTER:

Q. Well, then, what is right? Tell in your own way, Mr. Brown, what you mean by the $885,000 difference. Then counsel can examine you both ways and maybe get something out of it.

A. I will see if I can.

THE MASTER: Is this new testimony?

MR. EVANS: No, it was all covered before.

THE MASTER: How was it stated before?

MR. EVANS: I think it was perfectly clear before.

THE MASTER: Mr. Brown approached it somewhat differently before. If you can help, bring him back to his previous testimony.

MR. EVANS: Well, let's see. I don't think it is very important anyhow.

BY MR. EVANS:

Q. Mr. Brown, whatever the difference was, whether it was $800,000 or more or less or whatever the difference was, your conclusion was that the vessels which Bethlehem built were of a more expensive type to construct than the comparative vessels furnished by other yards?

A. Yes, sir.

Q. Now whether that is $800,000 or a million or $500,000, whatever it is, that is a fact?

A. That is a fact.

Q. Now when you came to make your actual comparison of cost, as I recall it, you ignored that altogether?

A. Absolutely.

Q. And you only told us the $800,000., which you said in a program of this size was negligible, to illustrate that in making that comparison you weren't comparing a cheaper article which Bethlehem built with a more expensive article which somebody else built?

A. No, sir.

Q. But if anything, it was the opposite, is that it?

A. Yes, sir. Maybe I can make it clear here. If the group had turbine machinery in it, built by other builders, there was an allowance made to change that to reciprocating-machinery, to make both classes conformable. If on Bethlehem's part they had turbine machinery and the other company had reciprocating machinery, the Bethlehem was increased to comply with the other builder.

Q. But that was simply for the purpose of determining whether your comparison was a fair one both for Bethlehem and the Fleet Corporation or to see whether you were comparing things of a similar or approximately of a similar value, wasn't it?

A. Yes.

Q. And you found as a result of that calculation, and that was the only importance of that calculation, that what you were comparing was an article or group of articles which Bethlehem had furnished which by and large were more valuable articles than the articles furnished by other yards which you used as a basis of comparison?

A. That is right.

Q. Now then when you came to your actual comparison of cost, I understand you made no allowance whatever for those differences?

A. That is right.

Q. You compare them vessel by vessel?

A. That is right.

Q. Now then you tell us what the comparative cost was on the program as a whole, that is, the entire contract ship program of Bethlehem, with the entire ship program of the Fleet Corporation had with the yards other than Bethlehem on the basis of cost per dead weight ton.

THE MASTER: Of the same class Bethlehem was building?

MR. EVANS: No, I wanted first as a whole and then I am going to group later.

THE MASTER: Well, he hasn't gotten that.

BY MR. EVANS:

Q. Well, what comparisons did you make?

A. We drew all the facts together and put them in classes and the only comparison you can make at all is by means of a chart.

THE MASTER: That is why I asked my question first. I knew he would get back to the chart.

BY MR. EVANS:

Q. Now tell us what the result of that comparison was?

A. The result of this comparison was that in all cases with the exception of, I think it is at Harlan, the Bethlehem's prices are very much lower than those of the other builders when reduced to a comparative dead weight basis.

Q. In all cases?

A. Yes, sir.

Q. Now what is the one exception?

A. There is a 5,100 ton vessel.

Q. 5,100 ton cargo boat?

A. Cargo boat.

Q. Under what contract?

A. Well, if that is necessary, I will have to go back in here (indicating). There were five of them built at Harlan and two of them built at Moore, but they are under contract 314.

Q. And as to those boats, you found that the Bethlehem prices—by which you only mean the price Bethlehem is asking under those contracts?

A. Yes, sir.

Q. Was higher than the average price which the Fleet Corporation paid for similar vessels to other yards?

A. Yes, sir.

Q. Now did you make a comparison, contract by contract, I mean for each Bethlehem contract, or did you make it for each type of Bethlehem boat? I mean did you make it on the 9100 ton type?

A. Made it on the 9,100 ton type, 10,100 ton type, and so forth on each size of vessel.

Q. On each size and each type?

A. And each type.

Q. You did not compare tankers with cargoes?

A. No, they are separate sheets.

Q. Now then do I understand you to say with the exception of 5,100 ton cargo, on contract 314, in the case of each one type and size of boat which Bethlehem built, the price which Bethlehem is asking for dead weight ton is less than the average price which the Fleet Corporation has paid for similar vessels built by other yards?

A. As compared with contracts made in 1917 and 1918; not those made in 1919 and 1920.

Q. No, I meant built under contract, and made at approximately the same time Bethlehem was building?

A. Yes.

Q. Now didn't you also make comparison of the cost per ton of the entire program?

A. Including all of the ships?

Q. No, you have given us comparisons vessel by vessel or group by group, we will say, and you have shown that in each case with the exception of one, Bethlehem's price is lower. Now did not you take an average cost on all Bethlehem's tonnage built under these contracts with the Fleet Corporation, of course, I mean, and the average cost per ton of all similar vessels built by other yards under contract made at the same time?

A. You mean including 9,100 tons and 10,100 tons?

Q. Yes.

A. No, I don't see what you can get out of it.

Q. Well, if you didn't, all right, but I was under the impression that you did, Mr. Brown; that is all, you say you did not?

A. I don't recall any such.

Q. Well, I am just mistaken about it; I thought you did?

A. Yes.

Q. Now the result of your calculation, together with the papers showing how your conclusions were arrived at, are contained in this Exhibit which was offered in evidence at the last hearing, marked B-4, is that correct?

A. Yes, sir.

Q. And is the information upon which your conclusions are based set forth in that Exhibit in suffic-

ient detail so that anyone familiar with the building costs could take that Exhibit and check it and verify the accuracy of your calculations?

A. Yes, sir.

Q. And the propriety of your calculations?

A. Yes, sir.

MR. EVANS: Now if there is no objection, I will offer that in evidence at this time. It is a little irregular, I admit.

THE MASTER: There is no objection, I understand, to its being offered at this time. The objection is made to its relevancy, and it is admitted subject to exception granted to counsel for the Government.

BY THE MASTER:

Q. Mr. Brown, for my information, do I understand that you had here a chart showing the comparative per dead weight ton price between Bethlehem and the other builders on this class of boats that you have described, a separate chart for each one?

A. May I just show you what was done?

Q. Yes.

A. Now you have them taken in a group of vessels that average 3,950 tons at a cost of $785,000. This consists of 330 ships. They are one deck, 3-island type. There is another group called group B, consisting of 126 ships of an average dead weight of 5,250 tons, and the average cost of $1,015,000., which are likewise one deck, 3-island type. Then in order to produce the cost per dead weight ton it is merely the total cost divided by the dead weight, which results in a line marked price per ton dead

weight, 1-deck, 3-island type. This same process carried throughout on other types of ships covering 2-deck, 3-island type, under lump sum basis and as built by agency yard; also vessels of the shelter deck type. Each group gives the number of ships and from the chart can be taken off the total price and the dead weight. There is also plotted on the chart the ships that have been constructed by Bethlehem which have been enclosed by means of a double circle, which gives a direct comparison of the average cost of Bethlehem's ship in its group as compared with the average cost of vessels in similar group and similar type of vessel built by others.

BY THE MASTER:

Q. What is on the chart to indicate the ones of other builders—a single circle?

A. A single circle.

BY MR. HALLETT:

Q. When you say 2-deck, 3-island lump sum, do you mean that you confined yourself to lump-sum and did not include any of the cost plus contract?

A. I included all of the contracts given by you to me in that Exhibit.

Q. You have another line here which you call agency yard, so that you made a distinction between agency and lump-sum, and I am trying to find out where the cost plus contract, whether they are considered by you as agency yards or whether they are considered as lump-sum yards?

A. Well, the agency yards were your Hog Island Yard and the yard at Bristol, the Merchant Shipbuilding.

Q. I know which ones they are, but—

A. Now if you had cost plus contract at other yards, they were included in the lump sum basis.

(The description just given is the description of the chart that appears first in Exhibit B-4 called Shipping Board calculation, contract on East Coast and lake district.)

BY THE MASTER:

Q. Now is your testimony on the other chart substantially the same?

A. It would be exactly the same.

Q. Except as the basis for it makes the difference appear on the chart, but the method adopted is reflected in these other charts similar to the chart you just described?

A. Exactly the same.

Q. You have another chart, however, for the comparative prices based on the class of vessels alone, have you? That is to say, you have another single chart which shows the comparative price per dead weight ton, for, we will say, 9,100 ton tankers?

A. This is the 9,100 tanker.

Q. Where is it?

A. Right here. That is just what I have got. I got everything here, your 9,100 tons. Now you will get your price per dead weight ton there.

Q. And that all appears on the one chart?

A. On each chart. Now this is the tank shipped on the West Coast (indicating). These are the tanks shipped on the East Coast (indicating). These are the cargo shipped on the West Coast (indicating), and these are the cargo shipped on the East Coast (indicating).

Q. So that the charts are inclusive of all—each chart is inclusive of the various size of ships that you have testified to here, and the variation in the

chart is the location of the yard where the ship was built, the district?

A. The district in which the ship was built.

Q. And the character of the size as to what it is.

BY MR. EVANS:

Q. Let me ask you, each particular size of ship is represented by a spot on your chart, isn't it?

A. Each particular group that was taken to produce the curves is plotted on the chart.

Q. So you have a spot for 9,100 ton tankers, have you?

A. Yes, as built by Bethlehem, simply read over 9,100 ton, that is the mark, Bethlehem's curve.

Q. Then you have a spot and that represents the asking price of Bethlehem's 9,100 ton tankers, and every other type of boat that Bethlehem built?

A. Yes.

BY MR. WOOD:

Q. And the corresponding chart shows the relation between that particular size and the cost of a group of ships on which you have arrived at the cost of a boat of that size built by other builders, is that right?

A. Yes.

Q. In other words, it is a comparison of the cost of the Bethlehem ships grouped according to size and class with the cost of similar sizes and classes of ships, is that right?

A. Yes.

MR. EVANS: Now I suggest that those two Exhibits, B-3 and B-4, be treated as physical Exhibits, and not to be incorporated with the record.

THE MASTER: It is understood with the consent of counsel, Exhibit B-3 and Exhibit B-4

will be treated as physical Exhibits and will not be copied into the record.

BY THE MASTER;

Q. There are just two or three questions I would like to clear up for my own information. Take your chart, Exhibit 34½, Mr. Brown, and tell me how, with the chart alone, you could get these factors that entered into the making up of the lines of the chart? Could you do it without having working papers?

A: No, sir.

Q. Therefore, these charts, this one and the one you referred to yesterday, and whatever others you may have made, are of value for comparative purposes only so long as your working papers are available to explain what entered into the making up of the lines on them, are they not, or insofar as your memory lasts to give the details that you used, isn't that so? Can you, for instance, take from the chart alone a figure to use as an estimate today without knowing what were the elements of cost of material and wages and other things of that kind?

A. No, you cannot.

Q. You cannot?

A. No, sir.

Q. During 1917 and 1918, about how long did you keep your working papers for these different charts?

A. That is very difficult to say.

Q. The changes were very rapid at that time in both the cost of material and cost of labor, were they not?

A. Well, in 1917, 1918, if it would happen there was changes in the cost of material—of course, there was changes in the cost of labor, but under these contracts, you had a labor protection from the Government, so that your change in labor as far as the

charts were concerned would be of some importance, but as a basis solely as you continue to contract on that basis of such and such a date. If that would change, then your chart would be all off.

Q. Now this chart carries a date November, 1917. Did you at the time of making up that chart have a detail in working paper form?

A. Oh yes. It was necessary to get it up.

Q. You had that?

A. Yes.

Q. How long did you keep your working papers?

A. That is difficult to say.

Q. Well, approximately, according to the best recollection when did you destroy them?

A. I haven't the remotest recollection of the papers. After they have been prepared and used, just the same as a lot of others, when you prepare a chart on a certain basis, the others become practically of no value.

Q. Well, they were necessary for a certain period of time, so long as you proposed to use the chart, weren't they?

A. Well, after the chart had been prepared and those conditions remained unchanged.

Q. I know, but you couldn't tell after you prepared the chart when there would be a change in the units from which you made your lines, could you?

A. No, if there had been a radical change, then you would have had to prepare new stuff.

Q. Exactly; so that in anticipation as a possible radical change, the course of wisdom, in times like those, like any other time, is to keep the working papers with the chart, isn't that so?

A. Depending on how much detail you go into. If you just make it as close as you could possibly

think, and where a large percentage was estimate, based upon judgment, if you are preparing a chart under the normal conditions, you go into a great deal of details and no doubt could keep that and that would become part of the file, but if you are going into a situation such as existed in 1917, where there was a big turmoil and not a great deal of time to do things, and where you might say there was a considerable fluctuation, now then you have given your certain factors which could be determined, or as being substantially fixed. Now then, you could make only an approximation. Now after having made that approximation, if those conditions hold, the fact you have just made up some general figures and arrived at a result, those papers that you had then are of no practical value as I see it, because if your situation changes in three months so that you got an entirely different situation, you have to make a further revision of the thing, then you have got to start afresh.

Q. Well, to the extent you had working papers, as I understand, you have no very definite recollection as to how long you kept them?

A. That is right.

Q. You had them, however, until after the meeting of January 3, 1918, in Washington?

A. Oh, I should say yes.

Q. The contract with the Government provided for a division 50-50, of a savings over and above the contract price?

A. Yes, sir.

Q. The contract also provided for adding to the contract price a differential in the wage scale, or if there was a decrease in wages, there was a deduction in the contract price, was that it?

A. The estimated wages were taken, which were decreased or increased and affected your basic cost.

Q. Now where was there a record made with reference to these contracts as to the estimated cost of labor, do you know?

MR. EVANS: That is all covered in the stipulation.

MR. BROWN: Oh no, absolutely not; let us have that question.

MR. EVANS: I am all wrong.

BY THE MASTER:

Q. The question that I was asking, Mr. Brown, relates to the item of wages. Now as I understand, the contract, the item of wages was to be up or down?

A. Yes, sir.

Q. And that was direct labor only?

A. Yes, sir.

Q. And do you have a single item of direct labor in the figures that you used for your working sheet in making up this chart 34½?

A. Yes, sir; not dividedly.

Q. And you used, as I understand it, for this particular chart, the direct labor payments that were made at the Fore River plant on the vessels that you used as the basis of figures, is that correct?

A. The plant direct labor cost, yes.

Q. And that figure, did you keep that figure for any length of time, on your direct plant labor cost?

A. I suppose that was kept with the estimate papers just as long.

BY MR. EVANS: You are asking about the actual direct labor cost. It is not only preserved, but it is furnished in the Exhibit G-6.

THE MASTER: What I was trying to get at was the direct labor cost that entered into the figures which he used in making up this chart, whether that was preserved also.

MR. EVANS: Well, I would like to help you—

MR. BROWN: Well, let the witness help him.

THE WITNESS: What I understand, Mr. Master, you want to know if I used the direct labor price during the construction period, did I use the direct labor cost existing in the yard as of January 3rd on which these contracts are based?

BY THE MASTER: That was what my question was.

A. That is what you want to get at?

Q. Yes.

A. I gave testimony here that we had been ordered in October to put in a change of wages to the wages that were being paid by the Navy Yard in the district where the ship was located. They were put in effect, but not in whole. The wages as of January 3rd, or of the period which I prepared this chart, had to be a more or less of a guess, based upon how the Navy Yard wages would affect the wages of the plant. Now we have got it so far as you could by departmental cost increases, but that wasn't complete, and you knew it was going to be more, so you had to assume an amount which naturally at that time you did assume some round figures.

Q. So that that factor in the chart was a figure

based upon the best information that you could get, but included an arbitrary adjustment that you made as a result of your anticipation of the cost?

A. Yes, sir.

Q. I wanted to ask just this one question, and that is, whether at the time that you and Mr. Powell were discussing the detail that was the basis for the figures given in your letter of December 19, 1917, he had the benefit of your working figures, either from the papers themselves or from re-construction sheets that you yourself gave him?

A. Yes, sir. Well, I understand the Master to ask me if Mr. Powell had the benefit at that meeting.

BY MR. EVANS:

Q. Now what meeting are you talking about?

A. Isn't he talking about the meeting of December 18th?

THE MASTER: Yes, the meeting of December 18th.

THE WITNESS: That he had the benefit of the information in some form that I developed.

THE MASTER: Whether Mr. Powell had the benefit of the same details that Mr. Brown had used in making up his chart, that is what I asked.

MR. BROWN: Now what is the answer to that question?

THE WITNESS: Well, no.

BY THE MASTER:

Q. Then you don't understand me, Mr. Brown?

A. Well, you are asking me if I had or if he had

all of this stuff that I had there. As I understand it, did I have it in whole or in part, or had I reconstructed a chart in effect which he got the benefit of what I had done, is that what the question is?

Q. Well, I am not concerned so much about the reconstructed chart as I am about the fact situation. You had certain figures you used in making up the chart which we called Exhibit G-34½?

A. Yes, sir.

Q. Some of them were actual figures given to you by the department, and some of them were your own arbitrary figures which you used, based on your own best judgment?

A. Yes, sir.

Q. Some of them were in working sheets, and some of them were in your head, you hadn't put them down on paper, as I understand your testimony. Now what I want to know is whether in working out the figures you did in your proposal of November 19, 1917, in the course of your discussion with Mr. Powell, where, as I understand it, you and he discussed the basis of the proposal that he was to make, Mr. Powell had the benefit from you of the details that entered into your making up of the lines of the chart that has been used here?

A. He had the benefit of the knowledge that I had acquired.

Q. And in what form did he get it?

A. He got it in the form of a re-constructed chart and an explanation.

Q. And explanation?

A. Yes, sir.

Q. And the explanation went into detail?

A. More or less, I should think.

MR. BROWN: Mr. Master, before adjournment, I would like to press this, if you don't mind, and to ask Mr. Brown in the details in respect to the facts and figures he submitted Mr. Powell at that conference. I would like to see what his recollection is.

THE MASTER: I understood he already testified he did not give him details except in the January discussion.

MR. BROWN: If you think it is clear he gave him nothing but an Exhibit which he remembered.

THE MASTER: No, he set forth the details.

BY THE MASTER:

Q. Mr. Brown, as I understand it, you not only reconstructed a chart similar to the one you reconstructed here for me, which is in the record of this case as Exhibit G-204, but you gave Mr. Powell an explanation of how you arrived at what the chart represented; is that correct?

A. Either at that time, or he understood it before that time.

Q. Either at that time or at a previous time when you had explained the basis for making up the chart which is G-34½, is that correct?

A. That is what I would recall.

Q. Well, do you recall whether at the time you explained this so-called reconstructed chart you went into the exact details of the various elements that entered into it?

A. No, I don't.

BY MR. EVANS:

Q. You mean you don't recall, or you don't know?

A. I don't recall.

BY MR. BROWN:

Q. Mr. Brown, do you remember that you explained the basis of this chart to Mr. Powell in general in the meeting of December 18th?

THE MASTER: Which chart are you talking about now?

BY MR. BROWN:

Q. The first chart, Exhibit G-34½?

A. Why, I don't think there is any question but what I explained to Mr. Powell the method or process of working this up.

Q. Prior to the December 18th conference?

A. Yes, I should think that would be previous.

Q. And what would be the date of such an explanation made to him?

A. That I couldn't tell you.

Q. Well, do you remember testifying under examination by the Government that to the best of your recollection you did not discuss this chart with Mr. Powell from the time he first asked you to prepare it until you finally conferred with him on the subject of the chart in December?

A. Well, I may have so testified, but if I did, you will have to take it for what it is worth. It has been so long ago.

Q. Well, what is your recollection now?

A. It certainly seems to me I would not prepare this thing for Mr. Powell unless I had discussed with him what was being done.

Q. Mr. Brown, don't you know you went into

considerable detail to explain why it would not have been practicable for you to go into conference with Mr. Powell from the time you first prepared it until you met him in Washington? Don't you remember so testifying?

A. Not from the time I first started.

Q. You don't remember so testifying?

A. I will have to answer no.

Q. Well, when you met Mr. Powell at the conference on December 18th, as I understand it, you did not explain to him at that time in detail the figures and the factors which you used in connection with the chart?

THE MASTER: Well, I don't think that is quite fair.

MR. BROWN: It isn't meant to be unfair.

THE MASTER: I know, but his answer to that is he did explain to Mr. Powell, either then or previously, all of the detail which entered into the making of the chart and that this was a reconstruction of the original chart.

BY MR. BROWN:

Q. Well, Mr. Brown, so that we may have the matter clear, did you explain to Mr. Powell, either at the December 18th conference or prior thereto, in detail the figures and factors used by you in preparing this chart?

A. I daresay I did at some time.

Q. You don't have any recollection of ever having done so, is that correct?

A. Well, it would be a perfectly natural thing to do.

Q. And you think it was probably prior to the December 18th conference?

A. That I can't say; either that or prior to it.

Q. But you have explained to him either at the December 18th conference or prior to that time, the basis of your preparation of this first chart?

A. I should say probably so.

Q. And that it had related to—that the basis of the chart had been Hulls 253, 254, 158 and 159, and that you likewise explained to him the particular factors and figures used by you in determining your estimation for the cost of similar ships?

A. I think that would be right, that I did explain that to him.

Q. Either at the conference of December 18th or prior to that time?

A. Yes.

(Recess until 2 o'clock P. M.)

HARRY BROWN, resumed:

BY MR. EVANS:

Q. I want, if I can, to clear up some confusion which appeared in your testimony relative to the comparison which you made of the cost to the Fleet Corporation of two ships built by Bethlehem and the cost to the Fleet Corporation of similar ships built by yards other than Bethlehem under contracts made approximately at the same time. Now, do I understand you to say that comparing, we will say, the tankers built by Bethlehem on the East Coast with tankers built for the Fleet Corporation on the East Coast by yards other than Bethlehem, you found that the price which is being asked by Bethlehem was lower than the price which has been paid

by the Fleet Corporation to other yards for similar vessels for the equivalent tonnage?

A. I said it would be less.

Q. And does that apply to every size and type of vessel which Bethlehem built with the exception of the 5100 ton cargo boats built by Harlan & Moore under contract 314?

A. Yes, sir.

Q. In the case of those boats I understand that the reverse is true, that the asking price of Bethlehem was higher than the comparative price which the Fleet Corporation has paid to other yards for similar ships?

A. Yes, sir.

Q. Taking the entire tonnage built by Bethlehem under these contracts in suit, and comparing the price which Bethlehem is asking under these contracts with the price which the Fleet Corporation has paid to other yards for the equivalent tonnage of the same type of ships, is the total asking price of Bethlehem more or less than the total price which has been paid to other yards?

A. Less.

Q. By how much?

A. Approximately $8,000,000.

Q. Now in making that comparison have you made any allowance in dollars for the fact that while the vessels are of the same type, or substantially the same type, there may be differences in specifications, as, for instance, that one special might have turbines and the other reciprocal engines, and details of that sort, which would either increase or decrease the cost of construction of that vessel? Have you taken that fact into consideration in making your

comparison as to the relative cost to the Fleet Corporation?

A. No.

Q. So that the figure you give at $8,000,000, in round figures is based on the assumption that the vessels were of substantially the same specifications?

A. Yes, sir.

Q. Now, in point of fact they were not of the same specifications, in every case, were they?

A. They were not.

Q. In order to see whether in making the comparison on the basis which you did, that is ignoring those differences in specifications, in order to determine whether you were making a fair comparison, you went a step further, as I understand it, and you made an analysis of all these differences in specifications between boats built by Bethlehem and boats built in yards other than Bethlehem. Am I right?

A. Yes.

Q. And that was for the purpose of determining which vessels were the most expensive types to build, those built by Bethlehem, or those built by other yards with which you compared Bethlehem ships?

A. Yes, sir.

Q. And also for the purpose of determining vessel by vessel or group by group which was more expensive in your opinion?

A. Yes, in my opinion.

Q. Now taking it as a whole did you find that the type of vessels which Bethlehem built was more or less expensive type to construct than the type of

vessels which the other yards built and which you had used for the purposes of your comparisons?

A. They would be more expensive.

Q. Bethlehem's would have been more expensive?

A. Yes.

Q. And in your opinion about how much more?

A. About $880,000.

Q. And that is the $800,000. figure or the $880,000. that you previously referred to in your testimony?

A. Yes, sir.

Q. Putting it in another way, is this a correct statement; that in making the comparison you have compared a more expensive type of vessel built by Bethlehem with a less expensive type built by other yards?

A. Yes, sir.

Q. And making no allowance for that difference in value but treating them as though they were of equal value you found that the total cost or asking price of Bethlehem is $8,000,000. less than the price paid to other yards for a corresponding amount in tonnage?

A. Approximately so.

Q. Now, if you adjusted that figure so as to reflect the differences in specifications, as I understand it, if you were attempting to compare two things of the same value, the difference, instead of being $8,000,000., would be $8,800,000.00; is that right?

A. Yes, sir.

Q. That is to say, if the other yards, instead of building vessels of the specifications which they did build, had built vessels to the specifications to which Bethlehem built them, then, in your opinion, the

cost to the Fleet Corporation of those vessels would have been increased by another $800,000.?

A. Yes, sir.

Q. And added to your $8,000,000. which is the difference between the price to date, which they actually paid, and what Bethlehem is asking; is that a correct statement?

A. Yes, sir.

MR. EVANS: Is it clear?

THE MASTER: That clears up to the mind of the Master at least the differences that existed in the testimony heretofore. We understand that this is all subject to Mr. Brown's objection as to its relevancy.

BY MR. EVANS:

Q. Did you say Mr. Brown, that you got your figures as to Bethlehem's asking price from Mr. Geiss?

A. Yes, sir.

Q. For the purpose of making up that Exhibit B-4?

A. Yes, sir.

Q. I am not sure that it is quite clear what the fifty cents was that you used as the current earning rate of direct labor in making your estimates of cost based on 253 and 254. Will you tell us again, at the risk of repetition, what that is?

A. That is the amount of money that is paid to labor in the yard divided by the number of hours that they worked and includes piece work, premium work and contract work.

Q. As I understand you to have said before that was not an exact calculation?

A. Right.

Q. Why wasn't it an exact calculation? That is what I want to know?

A. As I said before, the rates had not all been put in.

Q. You mean the Navy Yard rates?

A. The Navy Yard rates had not all been put into effect.

Q. But you had been ordered to put them in, hadn't you?

A. We had been ordered.

Q. Were there some delays in getting them into effect after you were ordered to do so?

A. Well it takes time to get them into the various departments, if you have several thousand men working you don't just put them in over night and make your adjustments and the probability is you might delay putting them in as much as you can, especially when you got fixed contracts. Now your earning rate—

Q. I will come to that later but I first want to get clear just what it was intended to represent. Was it intended to represent the current earning rate in your plant, assuming that you had put into effect in all of your departments the current Navy Yard rates as you had been either instructed or authorized to do previously; is that what it means?

A. Yes, sir.

Q. It did not then include any anticipated increase in wage rates over the expected period of the construction of the vessels?

A. It did not.

Q. It was your attempt or the Accounting Department's attempt to figure what the earning rate would be on the current wage scales in effect at the Boston Navy Yard when that wage scale had been

fully put into effect at Fore River?

A. Yes.

Q. And the only reason that it was a matter of judgment or estimation was because you had not put that new rate into effect in all of your departments?

A. Yes, sir.

Q. Will you tell us what is the difference between a wage rate and an earning rate, if there is a difference?

A. Well the wage rate is a rate set per hour for each man working in the plant. The earning rate is the amount of money actually paid to the man divided by the number of hours he works.

Q. What is the difference?

A. The difference is this; take a riveter, his day rate may be 60 cents an hour and there is a certain number of rivets allowed for a day's work. He might readily drive twice that amount of rivets in a given number of hours.

Q. And suppose he does?

A. He doubles his wage.

Q. So that in that case, assuming that your wage rate was, we will say, 50 cents an hour, your earning rate would be $1.00 an hour, using the case which you stated, which may be an extreme case?

A. Yes.

Q. And is that true of direct labor other than riveters?

A. Yes, it is where ever piece-work or premium work or contract work applies.

Q. So your hourly wage rate does not give you your earning rate?

A. No, sir.

Q. Your figure of 50 cents, which you used, was

intended to represent the average hourly earning rate at the plant?

A. Yes, sir.

Q. Not the average labor rate, is that right?

A. Correct.

Q. The two things being different, for the reasons that you have just explained?

A. That is correct.

Q. And when you made your comparison with 253 and 254, you there again took the average hourly earning rate, did you?

A. Yes, sir.

Q. And not the average labor rate in effect during the period of construction of these ships—I mean you compared the same things?

A. On the same basis, yes, sir.

MR. BROWN: Mr. Master, I think it would clarify matters if it would be agreed by counsel that all Mr. Brown's testimony which has been or which will be quoted from pages of the testimony taken in the previous proceeding before Judge Roberts, prior to page 441 of such testimony, was testimony which was given at the hearings before Judge Roberts that took place on May 20 and May 22, 1929, and that the first reference to the second chart, alleged to have been constructed at Washington, appears at page 442 of Mr. Brown's testimony given at the hearing before Judge Roberts on June 10, 1929.

MR. WOOD: I think that is agreeable if it is also stipulated that at no time, either during his direct, cross, or re-direct examination, when he was called as a witness by the Government, was any reference made in the direct examina-

tion to anything that he did in Washington, but that that examination on which he was questioned in chief by the Government, it was confined to an explanation of his chart, of his original chart.

MR. BROWN: Well, of course, we cannot agree to that.

MR. WOOD: Well, that is a fact, so then let us put it all in.

MR. BROWN: Well, it is not the fact, as I understand it, Mr. Wood.

MR. WOOD: Then you have not read the testimony and I read it all over yesterday.

MR. BROWN: Well, Mr. Wood, possibly you have more time to read the testimony than I have, but I will admit there was no reference to the second chart prior to page 441 of the testimony which was taken before Judge Roberts.

MR. WOOD: He was not inquired of as to what he did in Washington.

MR. BROWN: May I finish? That no inquiry was made of Mr. Brown, either by Government counsel or Bethlehem counsel, about the second chart prior to page 442 of Mr. Brown's testimony before Judge Roberts, which is on June 10, 1929.

THE MASTER: It seems to me, if the matter is one of importance, and either or all of you propose to refer to it, unless you can agree on just exactly what the fact was in the course of the examination and the extent to which the examination into that phase of his testimony was had, you had better put it all in and make it

a part of an Exhibit to this record, making it a physical Exhibit. Suppose we dispose of it this way, and, in view of the apparent differences of opinion that counsel have concerning what Mr. Brown testified to and when he testified to it, rather than take up the time of this proceeding now to settle that question, the Master will accept as a physical Exhibit, not to be incorporated into the record of the testimony here, all of the testimony of Mr. Brown in the previous hearing before Judge Roberts, with the understanding that if counsel can reach an agreement before the argument as to what part of it, if any, is to be used or not used, the Exhibit can be withdrawn; otherwise it will stand as a physical exhibit so that either side can refer to it and the Master can refer to it as the occasion may arise.

Redirect Examination

BY MR. BROWN:

Q. With respect to the manner in which you drew your total cost lines on your original chart, Exhibit 34½, it appears at the hearing before Judge Roberts, at page 202 at the notes of testimony, you testified as follows in answer to the following questions by Mr. Brown:

"Q. Now as I understand from what you just said, having obtained those two spots for the two classes of ships mentioned, you then followed a curve, did you not, between those two points?

A. I took those points, and what I did I think, actually, was, I had a batten.

Q. You had a what?

A. A batten.

Q. What is a batten?

A. A spline.

Q. A spline?

A. Yes, a piece of narrow wood that is faired up?

Q. What does 'faired up' mean?

A. It means it is perfectly smooth, by getting your line on a straight edge, it is about an eighth of an inch thick, it is a very flexible line, that is a batten, you take that and put it on a spot here, and spot here, and bring it down to here (indicating), off the end point here, that is held by, I will say ducks. Do you know what ducks are?

Q. I am learning.

A. They are weights. They are lead weights that have a piece of wire in the end of them, and you come down to a point and hold this batten in place, you put that on there, at the two points, and swing that around into here (indicating). Your idea is that up at this part, from here (indicating) along down to a point in here, that your ratio of increase in costs on ships of the same general specification will be approximately a straight line. It won't absolutely, it will show a little jagged line, but this will give you an average and that will be a fairly straight line, take from there and put a straight edge against that batten, to get that, and you will swing this around into here (indicating), so you will bring this down about as far as you want, and you will spot on it.

Q. Now, as I understand it you have a flexible piece of wood called a batten?

A. Yes.

Q. Which you put so that the edge will hit these two points for the ninety one hundred tanker and the fourteen thousand nine hundred and fifty ton tanker?

A. Yes.

Q. Is that correct?

A. That is right, but if that is all I had to deal with I would draw a straight line between the two of them.

Q. How do you get the curve with the use of this batten between those two points?

A. It is not a curve, it is a straight line, you can get a batten, a straight line—

Q. So you put your batten between those two points and drew a straight line along the edge of the batten?

A. No, it came from there (indicating) down to here (indicating).

Q. I am talking about these two points.

A. That is a straight line, yes.

Q. That is a straight line, and when you got below the point for the 9100 tanker you pushed the end of the batten and made a curve which brought it around to the lower left hand corner of the chart?

A. Yes.

Q. And the push that you gave it was based on your experience as an estimator?

A. That is right.

Q. And did you give it a little push based on your experience above the 15,000 ton line spot?

A. Well, I wasn't much interested above the 15,000 ton line because I didn't think there was

any possibility of our building ships above 15,000 tons.

Q. And when you came to the actual spotting of the other lump sum lines you drew the lines with the same batten, in much the same way?

A. May have been another batten.

Q. You think possibly you had another batten?

A. Yes, we had several.

Q. One was a little stiffer or a little more flexible than the other one, perhaps?

A. Yes."

Do you remember so testifying?

A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir.

BY THE MASTER:

Q. May I ask whether the article which is in my left hand is what you call a batten?

A. Yes, sir.

Q. That was offered before Justice Roberts at the previous hearing as an Exhibit?

A. Yes, sir.

Q. And what I have now in my right hand is what you call a duck, and this was also offered in evidence?

A. Yes, sir.

BY MR. BROWN:

Q. It appears you testified in that proceeding before Justice Roberts, commencing at page 211 of the testimony; as follows:

"Q. Now, with respect to the west coast cargo line, as I understand it you estimated that the cost of a West Coast tanker was approximately 5 per cent. more than the cost—

A. Yes, sir.

Q. —of an East Coast tanker, and you drew your line accordingly?

A. Yes, sir.

Q. Can you give us any explanation as to how you drew that line with your batten?

A. That is the same way, you took your, each of these points here, about 5 per cent., figured on a slide rule, it may be a little one way or the other, and you did the same thing.

Q. Making an appropriate curve by the push of the batten between the two extreme points?

A. Well, essentially, yes.

Q. In drawing that base line for tankers, East Coast, did you 'fair' the line, as you said in your testimony, which as I understand it would mean to draw a series of short lines, or did you just run your pencil along the edge in one continuous line?

A. Well, in one continuous line.

Q. In one continuous line?

A. Sure.

Q. And the same thing was done, as I understand it, with respect to all these other base cost lines, is that correct?

A. That is right.

Q. Is that correct?

A. Correct."

You so testified, did you not?

A. I did.

Q. And is that correct?

A. So far as that testimony is concerned, that is what I testified.

Q. Now it appears, commencing at page 218 of

the testimony before Justice Roberts you testified in answer to the questions:

"Q. All right. Now, when you came to the cargo East Coast line, as I understand your explanation it was estimated by you that the cost of a tanker of ten thousand dead weight tons would be about 15 per cent. more than the cost of a cargo vessel of the same tonnage, and that the cost of a tanker of 15,000 deadweight tons would be about 10 per cent. more than the cost of a cargo vessel of the same tonnage. You then took the points representing this differential in cost and spotted them on the chart from the line representing East Coast tankers and through such points you constructed the line marked 'Cargo East'?

A. That is right.

Q. And you constructed that line with the batten much in the same manner as you have already described?

A. Oh, substantially so, after I got one I may have taken the straight edge, may have rough handed part of it out.

Q. Well now, was there any occasion for not using the same method in constructing the cargo East Coast line that you had employed with respect to the Construction of these other lines?

A. Will you make that a little clearer, just what do you mean?

Q. Was there any occasion for your drawing the East Coast line in any manner different than the actual—

A. No.

Q. —workmanship of drawing the other lines, so that in all probability the lines were

all constructed with the batten in the same way which you have already described, and which you have already said they were?

A. May have been, yes, may not.

Q. May or may not, but you cannot think of any reason why one line should be constructed in a different manner than another line?

A. No, there is no particular real difference.

Q. And there would not be any occasion for having—there would not be any occasion, having determined your base line, for not putting on at the same time, all these other lines representing the total cost of these ships, would there?

A. Well, there might be, you may put on your tanker line, and you may be called away, doing something, and may come back a couple of days later and put on the other stuff, it doesn't necessarily follow that with a thing like that we complete it all at one time, especially under those conditions. You took such time as you had, and the cargo line may have been put on a week or two weeks later.

Q. But it is likely, as I have understood you to testify, that these lines were all constructed, as far as the workmanship goes, with this batten, and in much the same way?

A. Well, in pretty much the same manner."

You so testified, did you not?

A. Yes, sir.

Q. And that is correct.

A. That testimony.

Q. That testimony is correct, is that what you said?

A. That is what I said, taking, of course, that you have read it to me just as it is there.

Q. And it appears in paragraph five of Exhibit G-154, entitled "description of graph", reads as follows:

"5. It was estimated that the cost of a tanker 10,000 dead weight tons would be about 15 per cent. more than the cost of a cargo vessel of the same tonnage, and that the cost of a tanker of 15,000 dead weight tons would be about 10 per cent. more than the cost of a cargo vessel of the same tonnage. The points representing this differential in cost were spotted on the chart from the line representing East Coast tankers and through such points the line marked 'Cargo East' was so constructed."

That is correct, is it not?

A. Yes, sir.

Q. That explains the manner in which your cargo East line was originally plotted on the graph, does it not?

A. As given by that testimony, yes.

Q. And with respect to the explanation for the spots which you had on the East Coast cargo total cost line it appears that you testified before Judge Roberts as follows, commencing on page 222:

"Q. Now will you, showing you the original chart, exhibit G-34½, will you explain what the marks or spots enclosed in circles and appearing at the seven thousand ton, nine thousand ton, ten thousand ton, and the twelve thousand ton lines represent?

A. Well, they may have been in connection with the development of this line here, or this one (indicating) off through here, I can't tell you just exactly when those things were put on.

Q. Well now, with respect to such points when

enclosed in a circle on other lines there is usually some initials put opposite them representing one of the Bethlehem plants?

A. Well, that just happens, that is all.

Q. Is it likely those points I have referred to on the Cargo East Coast line also represented contract prices that were afterwards agreed upon between Bethlehem and the Fleet Corporation for this—

A. You mean these?

Q. —type and weight ships?

A. You mean these?

Q. The spots on the East Coast Cargo line which we have designated?

A. That (indicating), and that, and that?

Q. Yes?

A. No, they do not.

Q. They do not?

A. No, we did not contract any of that size vessels at all, that is enclosed in any of those spots.

Q. And at the present time you cannot recollect why those spots were enclosed into circles?

A. No, except ofttimes you put a spot on and idly run a circle around it.

Q. And will you tell us how the spot on the East Coast Cargo line opposite the eighteen thousand ton tanker was arrived at by you?

A. Where is the tanker?

Q. Opposite—for the East Coast Cargo ship?

A. You mean this—that is—

Q. Let me get that question straight?

A. Yes.

Q. Will you tell us how the mark on the East Coast Cargo line representing the eighteen thousand ton ship was arrived at?

A. Well, that is probably arrived at after this

curve is developed, and this one (indicating), you compromised between the two in order to get a proper line for your ton per deadweight."

Q. You so testified, did you not?

A. Yes, sir.

Q. And that is correct, is it not?

A. Yes, the testimony I believe is correct.

Q. And on the same subject it appears that you testified before Judge Roberts, commencing at page 224 of your previous testimony, as follows:

"Q. And you cannot explain to us, or at least I understand you to say you cannot explain why the East Coast Cargo line happens to hit the contract prices that were agreed upon between Bethlehem and the Fleet for the construction of 5100 ton cargo ships at the Harlan plant, under contract 314; and 7400 ton cargo ships under contract 178?

A. Why, these 5100 ton ships were taken at a much later date and we submitted a price for them. As I understand the Fleet Corporation accepted the price and it was taken from that curve.

Q. And these marks you think possibly might have been put on after those contract prices were agreed upon?

A. May have been, or may have been put on before, because those 5100 ton boats came in at a much later date.

Q. And what was the purpose of putting them on after the contract prices were agreed upon?

A. Well, there is no particular object in putting them on. Oftentimes sit down and says, "Going to build a 5100 ton boat," and make a spot on it.

Q. In other words, every time, as I understand it, that you agreed on a contract price with the Fleet, which was arrived at after negotiation and

after a reduction from the original price named by Bethlehem as the probable cost, you happened to find that that price agreed on hit one of these lines, and you got out your chart and put a spot on the line and drew a circle around it and said, "That represents one of our ships."

A. Not necessarily at all.

Q. Not necessarily?

A. No.

Q. Can you think of any other explanation for these marks getting on the East Coast Cargo line?

A. No."

Q. You so testified, did you not?

A. If that is the testimony, I did.

Q. If I have read your testimony correctly, you so testified?

A. Yes, sir.

Q. And that is the fact, according to your testimony that I read?

A. According to the testimony that I gave at that time.

Q. And, on the same subject, it appears you testified as follows at pages 271 and 272 of the previous testimony, in answer to questions asked you by your counsel, Mr. Wood: "Q. Now, I want to ask you just one question about these spots. Mr. Brown has speculated as to how they might have been there, and you said you don't know. Let me ask you this, take the spot on the 5100 ton cargo boat, that is on the chart, which you were asked to bid on at a somewhat later time?

A. Yes, sir.

Q. Let's find that spot now, if when you were asked to give Mr. Powell an estimated cost for the 5100 ton tanker from this chart—

A. Yes.

Q. —and running your eye along it, you would put your pencil on that point there for the purpose of following it down with the eye to the dollar mark, you would have made just about that kind of a mark, wouldn't you, you might have circled it and might not?

A. Might and might not, depends how sharp your pencil is, what kind of pencil you got, just happen to go along and may run it down there and may put a circle around it or something.

Q. You have got to put something on there to hold your eye while you get the dollars?

A. Well, I wouldn't.

Q. You wouldn't, all right. Maybe you didn't do it that way. You don't know how those spots—

A. No, I don't know how."

Q. You so testified, did you not?

A. Yes, sir.

Q. With respect to the Union stock ships, it appears that you testified as follows before Justice Roberts, commencing at page 225 of your testimony: "Now, you will recall that there were stock ships at Union, being cargo ships of 11800 ton dead weight, which were afterwards included in contract 191, do you not?

A. Yes.

Q. And you will note that on the 11,800 ton mark for the West Coast—on the 11,800 ton line for the West Coast cargo line, there is a spot on that line representing the 11,800 ton cargo?

A. All right.

Q. Can you explain how that point happened to get on that line?

A. No.

Q. Contract 191 for the Union plant stock ships included two ships of 11,800 tons dead weight and one ship of 11,700 ton dead weight?

A. Yes.

Q. And one ship of twelve thousand?

A. Twelve thousand.

Q. Tons, dead weight?

A. Correct.

Q. Being cargo ships?

A. That is right.

Q. Can you explain to us how it is that this cargo West Coast line happens to hit exactly the contract price that was agreed upon after negotiations and after reductions from your original estimate of probable cost for all three of those ships on all three of those type ships?

A. Yes, as I said before this was taken off of these curves, and the proposition was given to Mr. Powell, and he decided that that is about as low as he felt he ought to go on them and he stuck to it. Now, those ships were stock ships and had been started and materials got out, and the original quotation you received on those ships was from the Union plant before the incorporation of the Bethlehem Shipbuilding Corporation, and they are submitted on a lump sum basis."

You so testified, did you not?

A. If that is the testimony, yes, sir.

Q. If I have read it correctly you so testified?

Q. With respect to the necessity of your having three points in order to determine a curve, you testified, according to your testimony before Judge Roberts, beginning at page 227, as follows: "Q. Now, Mr. Brown; as probably one of the most expert estimators in the world, in December or Nov-

ember, 1917 would you not say that in order to arrive at an accurate estimate by use of such a chart system as adopted by you, that it would be necessary to have at least three spots from which to construct an accurate curve?

A. You have three. You got your zero and two others..

Q. You have your zero and two others?

A. Yes.

Q. Well, that is exactly what I would have supposed, and you will note, do you not, when I show you this original chart, Exhibit G-34½—

A. Yes.

Q. —that your zero point—

A. Yes.

Q. —is the point into which your cargo east line was originally constructed?

A. Well, we were these others carried down there, doesn't follow that you carry all your points down, you may put this in, it is a very heavy line, to see just what you are driving at, it may have been done with different pencil or a different time after this is on. When you get below 3,000 ton on a ship your line is probably of no use at all.

Q. You say more lines than the Cargo East line were carried down to zero on that chart?

A. No, I say you carried through on the proposition and may not have carried the line down—

Q. Wouldn't it be likely that you carry the line through to zero which was your base line in preparing the chart?

A. Not at all.

Q. You think you would first construct your base line without carrying it through to zero, and then on the basis of your base line construct another line

which you would carry through to zero?

A. That is very likely. You might quite possibly do it.

Q. What would be the purpose of carrying through the subordinate lines to zero when you knew it was never contemplated that there would be ships constructed, certainly less than five thousand tons?

A. Good many objects."

Q. You so testified, did you not?

A. Yes, sir.

Q. Now, with respect to the explanation which you gave before Judge Roberts for the erasures appearing at the lower end of East Coast Cargo total cost line, it appears you testified as follows, commencing at page 229 of the previous proceeding: "Q. If that was an explanation I didn't quite get it. Now, Mr. Brown, will you explain why on the original chart it appears that the East Coast Cargo line from 3,000 tons to zero has been erased?

A. Well, I cannot tell you. There is lines through here (indicating) also erased. There is lines through here (indicating) that have been erased. If you look at it there are a number of erasures on it.

Q. You cannot tell why?

A. No.

Q. —those erasures have been made?

A. No, I cannot tell you."

Did you so testify?

A. Yes, sir.

Q. And that is correct, is it not?

A. Yes, so far as the testimony is concerned.

Q. And, with respect to the erasures at the upper end of the East Coast Cargo total cost line, it appears you testified as follows before Judge Rob-

erts, commencing at page 230: "Q. And you can tell us why there have been erasures at the top of the East Coast Cargo total cost line which are barely discernable on the original chart?

A. I have a very hazy recollection of that, but they came in some time later and we had some argument, I think Mr. Powell, and myself, about the probable cost of ships or the trend of costs of ships in excess of the 14,000 tons or 12,000 ton ships which got beyond the physical capacity of the plant to handle, and my contention was these lines would run in off through here, and if not, through here (indicating). It was a question of just roughing off some lines in through there, in a matter of discussion.

Q. Now, just as a matter of discussion?

A. That is what I would say."

You so testified, did you?

A. Yes, sir.

Q. And on the same subject, at page 234 of the same previous testimony, it appears you testified as follows: "Q. And you cannot say definitely that those lines, as I understand it, were put on at the time of your original preparation of the chart or subsequent to it?

A. I don't know.

Q. You don't know?

A. No.

Q. Now, can you tell us why there were certain erasures made in connection with the extension of the cost per ton, Cargo East Coast line, so carefully that they do not appear except in a photostatic copy of the original chart?

A. Whereabouts, where are you talking about?

Q. I am talking about the extensions of the cost per ton, Cargo East Coast line?

A. You mean here?

MR. EVANS: Mr. Brown, you asked him to point out something on the original which you say is not visible. I think that is asking the witness to do too much.

THE WITNESS: Well, all right, I can explain that, Mr. Evans.

MR. EVANS: Let's see if you know what he is talking about.

THE WITNESS: I know what he is talking about, but as I explained to you before, this line—let me have your photostat—I can see what you are driving at, and you will find there is probably erasures at other places.

MR. EVANS: We show you the photostat that has been offered in evidence as Exhibit G-156.

THE WITNESS: Here is what he is talking about. You have got a line off in through here (indicating). You had some indications off through here, probably started curves, I don't know what it is, but this line here, this line developed along here, you will find there is a line probably appearing off of it in that manner. Now, that didn't look probably quite the way it ought to be, so you modified this curve, cost per ton dead weight, and erased the original proposition you had in here in order to get in your opinion what will be the proper cost per ton dead weight line.

Then you took this line here (indicating),

and you also probably modified that. I think you will find here is a line come along in here again, on this (indicating), before you may have arrived at what your differential actually would have been, and you will find this line here (indicating) is also somewhat modified, as a compromise between these lines again.

BY MR. BROWN:

Q. And as I understand it, you have no explanation as to why there were three lines drawn as extensions of the cost per ton, Cargo East Coast line, which were subsequently erased?

A. Only in the adjustment of the curves when they were originally made. Now, you take this—

Q. You don't know why those lines—

A. No.

Q. —were originally put on the chart?

A. No, except in the development of it. Now, you take that line, you got there, maybe there is a question came up on a discussion of this business—

Q. In other words?

MR. EVANS: Let him finish.

THE WITNESS: Let me finish.

MR. BROWN: I thought you had.

THE WITNESS: No. This curve line, going back here, which may have been a line drawn either at the time or subsequent to it, if it comes up, and if you argue that has got up to 15,000 tons and you have got the capacity of your punches and shears in your shop, and conclude to build above that, and have got to go to a different system, by additional tooling, for drilling your holes, we will say as an illustration, instead of punching them, your cost per

ton, dead weight, is going to rise, and it is not going to be a continual decrease, instead of putting a decrease on your line through there (indicating) and a gradual decrease the less you go, you may get a point of increase. This line in here may have been part of the development of this proposition off here, and this was used simply because we didn't think it was any good and then was cut out in the clean-up.

BY MR. BROWN:

Q. In other words, as I understand it these extensions to the cost per ton Cargo East Coast line were probably lines that were put on there in the development of this chart?

A. No, they were probably put on there afterwards.

Q. They were probably put on there afterwards?

A. Yes.

Q. Although you cannot remember when they were put on?

A. No.

Q. Or why they were put on?

A. Absolutely not.

Q. And you cannot remember, as you cannot remember that, how it is that those three lines which have been put on as extensions to the cost per ton Cargo East Coast line happened to coincide exactly with the three extensions of the total cost Cargo East Coast line that are nearest to the final cargo, East Coast line?

A. Well, that may be.

Q. But you cannot tell us how?

A. No

Q. That happens to have worked out?

A. No."

You so testified, did you not?

A. Yes, sir.

Q. And continuing your testimony where the previous quotation left off, it appears that you testified in the hearing before Judge Roberts as follows:

"Q. You cannot give us any reason why that originally—why that East Cargo line is apparently a line which was constructed after considerable thought, shown by the character of the line, its heaviness at certain points, as the original base line of the chart?

A. Well, it wasn't the original base line of the chart.

Q. It wasn't the original base line of the chart?

A. I am absolutely, definitely positive of it.

Q. But you cannot tell us why the line which you say was the base line for this chart, being the tanker East Coast line, is a thin line which is apparently constructed without any difficulty along the edge of a batten?

A. That is quite right.

Q. And although the Cargo East Coast line was plotted from two points determined from that base line you cannot tell us why it has the appearance of being a heavily constructed line, constructed after considerable thought and several attempts to reach a proper line?

A. Oh, no, I can't tell you that.

Q. You can't tell us how that happens?

A. Oh, no.

Q. Would it refresh your recollection on that subject if I told you that the correspondence shows that up to December 12 there is not one word in the correspondence which indicates that

the Bethlehem Company is not to be permitted to construct the type of ship with which it is familiar and which it preferred to construct with the exception of transports, and that Bethlehem during the period from June to December 13, indicated that its decided preference was to construct cargo ships, and that it was clearly contemplated that it would be permitted to construct cargo ships, and that even after conference on December 12 with representatives of the Fleet, when tankers were suggested, that Bethlehem in its proposal of December 13 states alternative propositions for each plant, stating that its decided preference for construction at each plant would be cargo ships, duplicates of those named in the proposal. Will that refresh your recollection?

A. Not at all.

Q. As to the reason for the appearance of the Cargo East Coast line?

A. No.

Q. And in spite of that history of the transaction you would say—

MR. EVANS: Well now, just a moment, Mr. Brown. That is your history. You do not pretend to say that is in the evidence, do you?

(Argument off the record.)

MR. EVANS: Go on, I withdraw any objection.

BY MR. BROWN:

Q. And you will say, looking at this chart and with that back ground that I have given to you that it is not natural to suppose that that Cargo East Coast line was constructed as the

base line for that chart, after five preliminary efforts to arrive at a proper line for the total cost of the East Coast line, and that with respect to the last three of the preliminary efforts you then constructed corresponding curves, preliminary curves, for the cost per ton, East Coast line, that you were not satisfied with those preliminary efforts, that all those preliminary marks were erased, and that you finally determined that this final line representing the East Coast Cargo line was correct, and accordingly plotted a final line for the East Coast Cargo per ton line?

A. It might be quite possible, Mr. Brown, I started it with this thing, with the tankers, when I came up to the cargo vessels it is quite possible I drew these lines off here, and smudged with these lines (indicating) before we submitted any figures whatsoever, I don't know.

Q. Will you explain how that would be possible, how those preliminary lines representing flares off from the final lines would be possible if the Cargo East Coast line was constructed as you had explained in documents which have been offered in this case, by basing them upon two points determined by taking certain percentages from the tanker East Coast line?

A. Just repeat that question, please.

(Question repeated).

THE WITNESS: Why, you simply construct your line as you constructed your other lines, you got your two points on it and drew your line between them.

BY MR. BROWN:

Q. But your two points to construct that

line were the points at the 15,000 ton and the—

A. Yes.

Q. —a point at the 10,000 ton line?

A. That is right.

Q. And you know the preliminary flare-offs commence at 11,000 ton line?

A. That is right. That is quite right.

Q. You think in constructing that line your batten may have slipped from the top point representing the 15,000 ton line?

A. Not at all."

You remember so testifying, do you not?

A. Yes.

Q. And that testimony is correct, is it not?

A. The testimony is correct.

Q. Now, as I understand your testimony given in answer to questions by Mr. Evans this morning, you stated that at the time you prepared this chart that Mr. Schulze, while the head of the Estimating Department, was estimating solely in connection with changes and extra; is that correct?

A. What estimating they were doing was in connection with changes. Whether they were doing any I don't remember.

Q. That is what I understood, whatever estimating was being done, it was his function to do it and he was there prepared to do it?

A. Such as was assigned to him, yes.

Q. Such as was assigned to him would have been done by him and that is why he was there, was it not, as head of the Estimating Department?

A. Yes.

Q. And on that subject it appears that you testified as follows before Mr. Roberts, commencing at

273 of the testimony, in answer to questions by Mr. Wood:

"Q. You stated on re-direct examination that in your organization that you perfected in November Mr. Schultz was made chief estimator?

A. Yes, sir.

Q. What was he doing as chief estimator in November and December?

A. He was trying to get settled, for one thing, and trying to get a force together.

Q. Well, what were the functions of the estimating department as it functioned under him and after its creation?

A. Well, they did all the estimating, all the costs for new work and the costs of changes under present work.

Q. Well, you say cost of new work. You didn't make any estimates—

A. You asked what the purpose of such an office was.

Q. No, I am asking what they did, what they did?

A. Oh, they principally estimated the cost of changes until we came to the estimated costs of the transports, when they made a detailed estimate on it.

Q. Yes?

A. And they also had some other work that came in from the board which they made a detailed estimate on that."

You so testified, did you not?

A. Yes, sir.

Q. As I understand it, you started to work on this explanation of the chart, the result of which has

been presented in evidence as G-154, on your return to Bethlehem in November, 1924, is that correct?

A. Yes, sir.

Q. This is a matter that I do not want to have you go into unless it is necessary, but in your testimony this morning you indicated that there was some doubt in your mind as to whether your second chart, constructed in Washington, was constructed from one spot or whether you remembered other spots and also used them in connection with this preparation. Now I ask you again whether that chart was constructed from the one spot which you remembered for a tanker of 10,000 dead weight tons, or whether other spots were used in connection with its preparation?

A. That I can't tell you.

Q. Then I take from your testimony before Mr. Roberts, starting at page 442 of your previous testimony, in answer to questions by Mr. Evans, and this refers to your Washington work:

"Q. You took an ordinary sheet of ruled foolscap?

A. What we call a scratch-pad.

Q. A scratch-pad, but it was ruled?

A. Yes.

Q. And you made that into a cross section sheet by drawing vertical and horizontal lines?

A. One set of lines were on, and I drew the other set of lines. I then recalled a spot I had on the curve, and I placed that spot on there, and I reconstructed my curve as nearly as I could.

Q. What spot did you put on?

A. I put on a spot which was an outstand

ing spot, of a 10,000 ton East Coast tanker. It was a very easy one to remember, because it was exactly $200. a ton.

Q. That is what you had in mind?

A. Yes, sir. So I plotted that, as I say, as nearly as I could recall, from memory. Then I took off from that curve, which was tankers, the spots for the other sizes of ships on which we were going to submit proposals, and I knew from experience, which will be quite apparent, that if you have a spot located at a point there (indicating) it does not run in a straight line; that is not the nature of the cost. Any vessel below that spot must be a line somewhere under that straight line, and any vessel above that must be in a line somewhere above it. So you can take and reconstruct a curve from any one given point and project a line of that description (indicating).

Q. When you made your original point, you had three points?

A. I had the zero and two other points."

BY MR. BROWN:

Q. That refers at that point, as I take it, to the first chart?

A. Yes, sir.

"Q. When you reproduced that from memory in Washington, you had only two points?

A. Zero and ten thousand.

Q. The reason you selected ten thousand was because that was an outstanding figure in your mind because it was exactly two hundred dollars a ton?

A. Yes.

Q. With two points, will you explain how you get the drift of the curve?

A. Just as I have explained here, having that as a straight line wouldn't give you the relative cost of ships, due to sizes of the smaller types, and that below this it must be somewhat larger. Various elements entered into that. Mr. Sanford touched upon that in his testimony. The smaller the ship, the larger the cost per ton dead weight. The one point he had not touched on, which is a large factor in the question of cost, is that the per cents of the light weight and the dead weight in the smaller ships will be larger than on the larger ships.

Q. The point I want to make clear is that having the two points, that is, zero and your ten thousand ton tanker, by your experience and familiarity with this kind of work, you knew approximately what the drift of the curve would be?

A. Yes."

You so testified, did you not?

A. Yes, sir.

Q. Was that the occasion on which you explained to Mr. Powell in detail the factors and figures which you had used in connection with the construction of your first chart?

A. It was either that or some time previous to that. The fact is that I explained it to him at some time before—I cannot just definitely say the exact time that it was done—I would like to very much.

Q. Well, as I understand it, it was either on this occasion or six days prior, namely December 12, was it not?

A. Well it may have been earlier than that.

Q. It may have been earlier than that?

A. Well it may have been because when you are working on these things, as a rule, you would take them up with Mr. Powell.

Q. As I understand your previous testimony when I examined you, you testified that you had no discussion of this chart with Mr. Powell from the time he originally ordered you to construct it until the conference of December 12, at the earliest, in Washington; is that correct?

A. I may have stated that.

Q. But at any rate you think that at the time you reconstructed this second chart in Washington that Mr. Powell had been told in detail all figures and factors used by you in connection with the preparation of your first chart?

A. I believe that would be so.

Q. You think it was so?

A. I think so.

Q. And do you think that was probably explained to him before you attempted to reconstruct this chart in Washington?

A. Yes.

Q. How long before?

A. I don't know.

Q. You think it was before that time?

A. I think so.

Q. And with respect to Mr. Powell's allowance of approximately $10.00 per ton as an addition to your chart figures, it appears that you testified as follows before Judge Roberts on pages 448 to 450 of your testimony:

"Q. Mr. Brown, I observe that in the letter of December 19th the proposed price for a 10,000 ton tanker was $216 a ton?

A. Yes.

Q. As compared with your price of $206?

A. Quite right".

And then skipping to page 450 referring to the same ships:

"Q. Outside of that, for which your explanation is reasonably obvious, you do not recall by what process of calculation, mental or otherwise, Mr. Powell arrived at his figure of $2.16 as against your $2.06?

A. No, sir.

Q. Can you tell us whether he had any other figures which he threw together, any figures from your Accounting Department or your Estimating Department?

A. I don't recall that he had any.

Q. Can you say whether or not that figure, however it was arrived at, was built up from your figures or whether it was built up independently?

A. Built up from my figures."

Did you so testify?

A. Yes, sir.

Q. And, as I understand, you have already testified that the only figures you had at the January 3rd conference was figures that you had taken from your chart and submitted to Mr. Powell; is that correct?

A. That is the best of my recollection.

Q. Of course when I said the only figures you had I am referring to you and Mr. Powell?

A. Well, that is what I understand, and also as applied to this particular subject. We had a copy of other figures applying to other things.

Q. We are talking about the figures in controversy.

A. Yes.

Q. It appears you testified at page 196 in the previous hearing:

> "Q. And I think you have already testified to that effect, or else it has been admitted in evidence, but I will ask you again, all the contract proposals were made on the basis of this chart that was made by you?
>
> A. They were used as the base for the proposals."

You did so testify, did you not?

A. Yes, sir.

Q. With the cost available to you at the time this original chart was prepared, it would have been a very simple matter for you to have determined the current cost of Fore River Hull 251 which had been completed during January 1917, as compared with the returned cost of that ship in much the same manner as you did in connection with Hulls 253, would it not?

A. Are you reading testimony?

Q. I am asking you a question.

A. Pardon me. I didn't know whether you were reading testimony.

Q. (Previous question repeated).

A. Yes, sir.

Q. Have you the data which you used in connection with your investigation as to whether your allowance of 30 per cent. for anticipated decrease in efficiency of labor had been exceeded or otherwise?

A. No, but I can get it for you.

Q. Where is it?

A. I think you will find it in the New York office.

Q. Why didn't you bring it with you?

A. I didn't know what you would require.

Q. You did not know you were going to testify with respect to it?

A. No.

Q. Will you tell us just what you did in making the investigation and in reaching the conclusion which you have given to the Master?

A. Well we reduced it to an hourly basis of construction on the vessel which will be a measure or indication of hours worked.

Q. What cost did you reduce, what ships?

A. Cost of labor on 253 and 254 and 268 and 269 and then the contract ships at the Fore River.

Q. What contract numbers are you referring to?

A. The 9100 ton tanker. They only had two contracts there.

Q. And they were two ships that were not completed until long after the Armistice, as I understand?

A. That is right.

Q. Are you stating that in some manner you broke down the efficiency of labor with respect to those ships as it existed prior to the Armistice as compared with efficiency referring to the same ships after the Armistice?

A. Carried it right through with the ships completed in 1917 and then the subsequent ships were completed around about the time of the Armistice or maybe a little later or before, with the ships that were completed subsequent thereto.

Q. Now you are referring to ships that were built in Fore River under contract No. 183?

A. That covers 3, 9100 ton tankers?

Q. I understand that it does.

A. Yes.

Q. Let me tell you the dates they were completed and you will see what I am getting at. I am stating for your information it appears that one of these ships was completed July 16, 1919, the second August 13, 1919, and the third September 19, 1919?

A. Yes, sir.

Q. Will you go ahead with your explanation.

A. Well it was merely a question of reducing the direct labor cost of the ship into hours and if you had a difference in the hours between the two ships that represented substantially your efficiency factor.

Q. Did you take into consideration any items of overtime, piecework or premium work, or anything of that sort, that might have been different during war conditions than after the Armistice?

A. I was just thinking whether that would make any difference or not if you ran the same proportional amount of piece work it would be the same thing.

Q. I am asking you. This is a technical matter and I don't have much knowledge of it?

A. I am trying to explain to you that I don't want to withhold anything if I can help it, but you are asking me a question.

Q. Don't you think it would be better to bring that data here?

A. It probably would not help me. If I have the figures I can answer that probably as well now as at any time.

MR. BROWN: I think this is a matter of great importance, and, with the permission of the Master, I would like to get something we can

cross examine on or which our witnesses can investigate and see whether Mr. Brown's result is approximately correct rather than simply take his statement that he made an investigation, and that is what he says.

THE MASTER: I assume that is available, if you want it.

MR. EVANS: I will say if it is available we will be very glad to produce it.

BY MR. BROWN:

Q. Do you mean to say the data which you used in this computation is not available?

A. The last time I was in New York and looked into the cases, and this was before the trial before Mr. Roberts, they were there. I have not looked for them since.

Q. You say the data was there?

A. Yes, and I assumed it was still there.

Q. There was no mention of this subject at the hearing before Judge Roberts?

A. I know it wasn't but I looked in case you did mention it.

THE MASTER: I am afraid I am responsible for opening up this matter by the questions that I asked.

MR. BROWN: Yes, and you have started something that we will have to finish.

BY MR. BROWN:

Q. Is the data available from which you made your computation?

A. The data I acquired from the Accounting Department is available.

Q. And is that all the data that you used in con-

nection with the explanation which you gave Mr. Mason?

A. On the relative efficiency. That is what I based it on. There is no other way to get it.

Q. In other words, all the data on which you based your conclusion that your efficiency was decreased more than 30 per cent. is now available; is that correct?

A. I believe it is.

Q. And, in view of the fact that the efficiency of labor apparently decreased even more than your estimate of 30 per cent., can you now explain to us how Bethlehem effected a saving of approximately $670,000 on each of the stock ships covered by contract 199?

A. I cannot.

Q. It would be rather difficult to explain how such a saving could be effected, would it not, by inefficiency of labor increased in excess of your anticipated 30 per cent.?

A. Well, I don't see how you could be expected to know anything about that. I wasn't out there and I didn't know anything about their operations at the plant.

MR. BROWN: I offer the document previously offered as Exhibit G-3, showing the dates agreed upon by all parties upon which the hulls therein referred to were delivered by the Shipbuilding Corporation to the Fleet Corporation.

(Admitted without objection as Exhibit G-3.)

MR. BROWN: Before I pass on to something else, I deeply regret it but I think it is important to the Government's interest that

it should have the data from which Mr. Brown made his computation to which he has been testifying.

THE MASTER: The Master understands an examination will be made of the files of the Bethlehem Company and if the data is there, and the witness expects it will be, it will be produced, and I further understand that if it is not there an effort will be made to reproduce it from The Accounting Department where the original figures came from and it may take some little time, though it will be available if the Government needs it. The latter is my own addition.

BY MR. BROWN:

Q. Were the figures quoted in your December 9 proposal for a tanker of 9100 dead weight tons supposed to represent an average price between East and West Coast cost of such tankers?

A. Yes, sir.

Q. And that is true although you were submitting proposals which related only to East Coast tankers of that tonnage, was it not?

A. Yes, sir.

Q. It is true, is it not, as you have already testified, that you never used in any way the working papers which you originally used in connection with the preparation of this chart known as Exhibit G-34½ after its preparation?

A. Never used the figures?

Q. Never used the working papers? Is the question clear? The question is, as I understand you have previously testified, after your construction of this chart, known as Exhibit G-34½ you never made any use of the original working papers which

you had used in connection with the preparation of the chart.

THE MASTER: That is not exactly his testimony, because, as I understood it, he told me today that in discussing it with Mr. Powell he may have used whatever papers he had then, or he may not. He was not quite sure.

BY MR. BROWN:

Q. I did not so understand it.

THE MASTER: That was my understanding of his testimony. His recollection was not clear as to whether he had or had not but he probably had, or thought it very likely he had.

BY MR. BROWN:

Q. Is that your understanding?

A. That is my understanding.

THE MASTER. He did not say positively that he had not used them in answer to my question.

BY MR. BROWN:

Q. You testified, as I remember today, at the hearing before Mr. Roberts and at the present hearing as appears from page 130 of the present transcript as follows:

"Q. As I understand it, after the preparation of the original chart, you kept none of the original working papers or data employed in its preparation is that correct?

A. No, they were not kept.

Q. So that whatever the working papers or data may have been, they were never used by you subsequent to the preparation of the original chart is that correct?

A. That is correct."

Did you so testify?

A. I did.

Q. Both at the hearing before Mr. Roberts and at the present hearing?

A. Yes.

Q. And that is correct, is it not?

A. Well, wait a minute. You ask me is it correct. The question is whether I just understand what you are making it when you asked me if I used them afterwards. I don't understand you mean if I used them for purposes of a chart or for some other purpose or not, or whether I showed them to somebody or whether I took the figures off them for explanation. That means something different to me.

Q. What is your present recollection as to the use, if any, that you made of your original working papers and data used in connection with the preparation of this original chart?

A. Well my recollection is very dim about it. It is more than likely that I did take them up with Mr. Powell.

Q. Well, can you recollect that you took them up with Mr. Powell?

A. Well that was a natural thing for me to do.

Q. You think it is likely that you showed him these original working papers and data, whatever they were, in connection with your explanation of the chart to him?

A. I think it is most probable I did.

Q. And, as I remember your testimony, that was done either at the December 12th conference in

Washington or the December 18th conference; is that correct?

A. It would hardly be at the December 18th conference at Washington. It could not have been, because I did not have them there, so it must have been some time previous to that. Another thing, after you have a matter of this kind, unless you got some specific purpose on it; you are not likely to carry those things with you. You would only carry the finished chart and not the working papers.

Q. At any rate you have no recollection of having shown these working papers to anyone subsequent to the preparation of the chart; is that correct?

A. No distinct recollection.

Q. And with respect to the 50 cent rate which was intended to represent the average earning rate under the Navy Yard scale, it is a fact, is it not, that you did the estimating in connection with the determination of that rate?

A. I may have done part of it, the Accounting Department may have done part of it and I may have guessed at what could not be gotten, or the Accounting Department may have guessed at it.

Q. Do you think it is likely that you had data referring to that item at the time of your preparation of the chart?

A. Well I have some sort of recollection that at the Fore River plant, when they were ordered to put that in—I wouldn't say ordered but when it was approved to be put in—that there was the rates obtained from the Navy Yard and I think that there was a comparison made at that time, but that would be on the day rate basis, to my

recollection. Now you have to increase that for the earning rate, because the Navy Yard had very little piece work, if any, and then it becomes a different question. If you have to increase your piece work it is in proportion to your hourly rates. There are many things to consider. Now, as I recall, that was all taken up at the Fore River as to what effect it would have, but what the actual thing would be after being put into operation is something else.

Q. What I am trying to get at is your recollection as to whether you did have data showing figures, prepared by someone, either yourself or someone else, showing how this 50 cent rate was determined in connection with your preparation of this chart?

A. We had some data on that, yes.

Q. Well don't you think you had sufficient data at the time you prepared this chart to show in itself the manner in which you arrived at this 50 cent rate?

A. I haven't anything that I can produce.

Q. I am not asking you that. I am asking you whether at the time of the preparation of this chart it was a fact that you had some data or working papers, whatever their nature might have been, which would have enabled anyone, either in your position or anyone who had access to that data, to determine the manner in which this 50 cent rate was determined?

A. I should think so, yes.

Q. You think there was such data originally available?

A. Yes, sir.

Q. And, in view of the fact that you were to have labor protection under these contracts, it was

very important, was it not, that such data should be preserved in order to determine the increased wage cost which would be added to the base price of the contracts?

MR. EVANS: Don't you think that is a matter that calls for the construction of the contract?

BY MR. BROWN:

Q. Didn't you consider it very important to preserve such data in view of the fact that Bethlehem was entitled to a wage protection under its contract, and that it would be necessary to have the base labor rate in order to determine the amount of increase in labor cost that was to be added to the base price of the contracts?

A. I should say that it would not be so important to keep those papers that were utilized to arrive at your earning rate figure, that is, at least for the preparation of an approximate estimate.

Q. In other words, the work that you did, as I understand it, could very easily have been done all over again by the Fleet representative and by the Bethlehem representatives in order to determine, if they could, just what rate had been used in connection with your original estimates; is that correct?

A. No, because my rate was an entirely different rate than your adjusted labor rate.

Q. Wouldn't your rate have been helpful in enabling the Fleet representatives and the Bethlehem representatives to determine and adjust the controverted base rate which in turn determined the added labor cost to be added to the base cost of these contracts?

A. No.

Q. It would have been absolutely of no assistance whatever?

A. I think not.

Q. You remember that it became a very much controverted point, do you not, the controversy running along several years, as to what was the agreed base rate for use in connection with determining the labor cost to be added to these rates?

A. I had nothing to do with it.

Q. But you never volunteered any assistance to the Fleet representatives, did you, at the time of this controversy, to aid them in determining how the base rate had been determined in connection with Bethlehem's estimates?

A. Never.

Q. With respect to the question of tugs that were referred to in Mr. Evans's examination, I want to quote from your testimony at pages 515 and 516, before Mr. Roberts, in answer to questions by me:

> "Q. What information did you have with respect to the tugs you had previously constructed at Fore River?
>
> A. We had some tugs constructed at Fore River, and Mr. Powell had some constructed, I believe, at Cramp's, but we didn't have detailed information.
>
> Q. Did you have as much cost data as the data you had in connection with 253?"
>
> A. We probably did have.
>
> Q. You probably could have made the same cost analysis as on 253?
>
> A. Yes, but these tugs were entirely different tugs.

Q. You do not think this cost data would have been of much assistance in preparing the estimates?

A. It would have been of some assistance.

Q. It would not have enabled you to arrive at an approximate estimate?

A. It probably would have.

Q. But you did not make use of the data?

A. No.

Q. It was more or less of an educated guess that you made as to the cost of the tugs?

A. Yes.

Q. So that the tugs were more or less in a class with the troop ships when it came to making an estimate of the probable cost?

A. No, because troop ships run into millions of dollars, while tugs do not."

You so testified, did you not?

A. Yes, sir.

Q. I meant to ask you on this question of labor whether the effect of your method in preparing the original chart was to estimate the labor rate of all the East Coast plants at 50 cents, the same as in connection with Hull 253?

A. Well that you cannot tell. You may have a lower rate at another plant and may have considerable more hours, so while they utilized the 50 cents rate at the Fore River as far as the percentage of piece and premium work, at the other plants are concerned it might show a higher rate but a lower cost. Now on 158 and 159, which was the Sparrows Point vessels, you increased the ratio of the cost in the same proportion that you did at Fore River, and if they had a lower rate at the

period of construction than they had at Fore River, naturally you would show a lower rate at the time you made your comparison, but the comparison of rates from one plant to another—I don't think has very much bearing except you go into a close examination of the hourly rate.

BY MR. HALLETT:

Q. Then also it does not necessarily follow that the rates you estimated for the West Coast was 10 per cent. higher as you have stated and therefore 55 cents as the rate which you actually estimated for the West Coast?

A. That would be taken into consideration with how your relative labor costs run. We felt that at the Fore River plant we had just about as efficient organization that could be gotten together and if you had at the Fore River plant a cost, say just for purposes of illustration, at $80. a ton dead weight, and at the Union plant on the West Coast they had a cost of $85. dead weight ton, it would show—

Q. Are you through?

A. Yes.

Q. Then the effect of your estimate or method of estimating was that you did establish a 50 cent rate as the rate applicable at Fore River?

A. Yes, sir.

Q. But that at the other plants you established by the method of drawing the chart no particular rate?

A. That is right.

Q. That was in effect at that particular time?

A. That is right.

BY MR. BROWN:

Q. As I understand it, in the course of your

negotiations which took place with the Fleet representatives in December 1917 and January 3, 1918, it developed that the Bethlehem was unwilling to accept these ships on a lump sum basis, did it not?

A. That is correct.

Q. In other words, Mr. Powell refused to take these ships in controversy under a lump-sum contract?

A. Yes, sir.

Q. And up to the close of the conference on January 3rd, Admiral Bowles was insisting on the lump-sum form of contract, was he not?

A. He was.

Q. And finally, as a result of Mr. Powell's refusal to adopt the lump-sum form of contract, Admiral Bowles finally asquiesced in the half-saving form of contract; isn't that correct?

A. That is as I understand it insofar as Admiral Bowles's connection with these contracts was involved.

Q. Now, as I understand it, it was Mr. Powell's position at that time that he would not accept lump-sum contracts because under that form of contract Bethlehem would be limited to the contract price regardless of what the actual costs might prove to be; is that correct?

MR. EVANS: Objected to unless the question is directed to something that Mr. Powell said to the representatives of the Fleet Corporation.

BY MR. BROWN:

Q. Well, Mr. Powell went into his reasons for his refusal to accept the lump-sum form of contract very fully, did he not, at a conference with the Fleet officials?

A. Well that you will have to ask Mr. Powell about for he had many conferences with Mr. Piez with reference to the contracts that I wasn't there.

Q. You don't remember his reasons for refusing to accept the lump-sum form of contract?

A. No.

Q. And would you say you have no idea as to why Mr. Powell refused to accept lump-sum form of contracts for these ships?

A. Well my idea is pretty clear on it.

Q. What are the reasons?

A. In the first place, we had just been engaged—

THE MASTER: Do you think this is helpful?

MR. BROWN: Yes.

BY MR. BROWN:

Q. Do you know Mr. Powell's reasons for refusing to accept lump-sum form of contracts?

A. Yes, the absolute unsettled condition of the market, the very hazardness of the business and the volume of work that he was undertaking.

Q. In other words, as I understand it, in view of the uncertainty as to what the actual cost might prove to be, Mr. Powell refused to accept lump-sum forms of contract which would have imposed upon Bethlehem the possible occurrence of such contingency. Is that a fair statement?

A. You better ask Mr. Powell about that. I can't tell you what was in Mr. Powell's mind.

Q. But, so far as you know—I don't know whether this is a fair summary of your testimony—if Mr. Powell had any definite reasons for refusing to accept a lump-sum form of contract it is a mat-

ter that was of no special concern to you at that time. Is that correct?

A. That is right.

Q. Did you regard your chart prices here plus whatever fixed fee might be agreed upon, as equivalant to a lump-sum price which would be acceptable to Bethlehem for ships such as those in controversy?

A. Did not consider it in that light at all.

Q. Would your prices here have been proper prices, in your opinion, for the basis of lump-sum contracts?

A. You are asking me to give an opinion now?

Q. I am asking you as to whether or not in your opinion, as a very experienced estimator of costs, these prices shown by your chart were regarded by you at that time as fair and proper prices to be inserted in a lump-sum form of contract?

A. I would not have taken a lump-sum form of contract from anybody at that time.

Q. And why was that?

A. On account of the uncertain conditions that were existing. It would become a highly speculative proposition.

Q. In other words, no matter what the probabilities may have been, there was a possibility, for instance, that material costs might have increased during the period contemplated for construction. That is correct?

A. That is correct for any company.

Q. And likewise there may have been an increase in labor rates during the period contemplated for construction?

A. Well it was understood you would have protection on that so it would not enter into it.

Q. And also it was possible there would be a decrease in the efficiency of labor, was it not?

A. Yes, sir.

Q. And there was a possibility of strikes occurring during the period of construction, was there not?

A. Yes, sir.

Q. Likewise a possibility of increase in freight rates?

A. Yes.

Q. And a possibility of increase in existing transportation difficulties?

A. Yes.

Q. A possibility that your position on the priority list might be changed?

A. We did not know much about priority then. I think that was developed a little later.

Q. With respect to material?

A. Yes.

Q. You didn't know much about that?

A. No, not at that time, excepting that we knew we would get priority in the construction of the Destroyers.

Q. Then there was a possibility of your priority as to the draft, that it would be affected, and you would be unable to obtain a supply of labor?

A. Yes.

Q. So it was in view of all these possible contingencies that you would have been unwilling to accept the lump-sum form of contract?

A. Personally I would have been unwilling.

Q. And, as I understand it, you would not have accepted a lump-sum price unless it was so big that it might properly be termed a whale of a price, and so big that Bethlehem could not afford not to take it?

A. You are asking me my personal opinion?

Q. Yes, your personal opinion.

A. I would not have taken it no matter what the price was. That is my personal statement.

Q. And if there was any lump-sum price acceptable to you it would have to be consequently very much in excess of the price shown by your chart plus the fixed fees agreed upon?

A. I would not have taken them on any basis whatsoever. It is understood that is my personal views in the matter.

Q. That, as I understand, to summarize it, was because there were all these possible contingencies which, no matter how probable or improbable, might have occurred, and it was impossible to prophecy their effect, and consequently, no matter what the lump-sum price might have been, Bethlehem might have found themselves on the short end of it, and other builders took the same view?

A. The old line builders did.

Q. The old line shipbuilders all took the view, just as you expressed it, that if they were to accept lump-sum contracts that the prices would be so high they would necessarily take into consideration the possible occurrence of all these contingencies that we have spoken of. Is that correct?

A. I couldn't state for them. After the conference held on the Destroyers they didn't want them, wouldn't take them on a lump-sum basis.

Q. You are the one suggested this about other shipbuilders. It is a fact, is it not, that no shipbuilder would accept the lump-sum price unless it was so high that in their opinion they could offer them adequate protection against the possible occurrence of all these contingencies we have been discussing; isn't that correct?

A. Well how do you expect me to answer for the other shipbuilders?

Q. You were one of the most experienced shipbuilders in the country at that time, you knew everything that was going on about ship construction and it was your duty to know it. Now didn't you know sufficient to enable you to answer the question that I have asked you?

A. In reference to what was in the minds of the other shipbuilders?

Q. No.

(Question repeated as follows: It is a fact, is it not, that no shipbuilder would accept a lump sum price unless it was so high that in their opinion they could offer them adequate protection against the possible occurrence of all these contingencies we have been discussing. Isn't that correct?)

A. I don't know.

Q. Well, would you agree with the statement which was made in a brief filed by Mr. Cravath's office with the Attorney General during the course of this litigation, stating that the rapidly changing prices of labor and materials and other conditions which obtained late in the year 1917, made contractors most reluctant to make lump-sum contracts for the construction of vessels, and they could be induced to make them only at prices which required the Fleet Corporation to assume risk of increased cost. Would you agree with that statement?

A. Yes, I will agree with that statement.

Q. Well, that is all I am getting at.

A. All right.

Q. Now the great advantage of the Half-savings contract, as I understand it, was that the Govern-

ment would not be called upon to pay a lump-sum price which because of its allowance for these contingencies would in all likelihood prove to be very substantially in excess of the actual cost plus a fair profit, was it not?

MR. EVANS: Is Mr. Brown questioning him as an expert on contracts or are you asking him if this is the result of discussions they had with Mr. Piez or Admiral Bowles?

THE MASTER: I was wondering whether the witness is competent to express an opinion that would be helpful to anybody as to whether or not that might have been advantageous to the Government.

BY MR. BROWN:

Q. Did you understand the intended purposes and advantages of the Half-savings form of contract?

THE MASTER: Does that make any difference?

MR. BROWN: I don't know whether it makes any difference whether he understood it.

THE MASTER: What I am trying to get clear in my head is what difference it makes what this witness understood as to the motives for making any form of contract?

MR. BROWN: He is the man that prepared the estimates and suppose he prepared them on a lump-sum basis, as we contend he did, that makes the difference.

THE MASTER: I do not see it is going to be helpful to us to get his interpretation of what was the understanding of the various people

concerned as to their motive for making this form of contract.

BY MR. BROWN:

Q. You were familiar, were you not, in a general way, with the confused conditions prevailing in the Emergency Fleet Corporation at the time of your negotiation in December, 1917?

A. Yes.

Q. And, to sum it up, these officials of the Fleet Corporation at that time were literally swamped with work, were they not?

A. I wouldn't say they were so literally swamped with work.

Q. Mr. Piez, at that time, as general manager, was undertaking the organization of the Fleet Corporation, was he not?

A. Admiral Harris was there for part of the time of the negotiations but when he left Mr. Piez stepped in to take the place.

Q. And it was probably the most tremendous business that had ever been gotten together, was it not?

A. Yes, I will agree with you it was a big business.

Q. And there were hundreds of shipbuilders probably in touch with Mr. Radford's department, as manager of the contract department, at that time, were there not, in connection with ship construction?

A. Yes, a lot of them.

Q. In testifying, in answer to Mr. Evans' question, that the various members of the Fleet corporation that you have mentioned, Mr. Piez, Admiral Bowles, Captain Radford, Mr. Ferris, Mr. Cox, were competent to check your estimates, it does not mean

that you submitted your chart and your explanation of the chart to them for checking?

A. It does not.

Q. You did not do that?

A. No.

Q. And without cost data, such as was used by you in connection with the preparation of this spot for Hull 253, the Fleet representatives had no way of determining at that time the probable cost to Bethlehem of building ships singlar to the ships upon which you were estimating, did they?

A. They had no cost but they had contracted for a great number of ships.

Q. But I say again, that, as I understand it, in the absence of such cost data as was used by you in connection with your estimate for a 9100 ton tanker, the officials of the Fleet Corporation had no way of determining the probable cost to Bethlehem of building such a ship, had they?

A. If they had no data available they could not estimate the cost, but if they had data available they certainly could.

Q. You never had furnished them with such data, had you?

A. I had not furnished them such data.

Q. And, in the absence of such data, they were consequently unable to determine the probable cost to Bethlehem of building such a ship as you have mentioned?

A. If they had data from other places they could estimate the cost to Bethlehem.

Q. Do you think it likely they had data such as you have testified to with respect to Hull 253 by which they could determine the cost to Bethlehem of building these ships?

A. They were not determining costs to anybody. They were determining what they considered to be a fair contract basis. Nobody could determine costs.

Q. And in the absence of such data as you say you used in connection with the preparation of this chart, as I understand it, it would have been impossible for the Fleet representatives to determine the probable cost to Bethlehem of building such ships?

A. I answered that in the absence of any data it would have been impossible for them.

Q. As a matter of fact, don't you know, and can't we get to the point on this, that under the circumstances as then existed you knew and everybody else engaged in this transaction knew that the only possible check the Fleet Corporation could make and had time to make, even if they had other available data, was a comparison of your prices with lump-sum prices submitted by other shipbuilders?

A. I don't know what information they had.

Q. Well, you don't know about any other information they had, do you?

A. No, I do not.

Q. You heard Mr. Radford testify that that is the only possible check they could make, and Mr. Piez testified to the same effect, did he not?

MR. EVANS: I object to that.

THE MASTER: We must draw a line somewhere. You cannot have through this witness all the testimony of the others.

BY MR. BROWN:

Q. Before we drop this point, what data do you think that the Fleet Corporation had in its possession from which it could have determined or should have determined the propriety of the estimates sub-

mitted by you as representing estimates of probable cost to Bethlehem of building the ships in controversy?

A. Why, I think they had data in their possession that had been supplied to them by practically all the shipbuilders of the costs of the ships that had been delivered at various periods. We supplied, when I was at the Fore River plant, the Bethlehem supplied to Admiral Bowles the cost of a lot of ships that had been completed, in addition to which he had the costs of ships when he was president of the Fore River plant. Now, if it went up 20 per cent. or 50 per cent., or 75 per cent., or a hundred per cent., or two hundred per cent., he had data on which he could form an opinion and his opinion would probably be far better than mine. He was a much more mature man and much abler man than I was.

Q. As I understand it you now say that according to your understanding the Fleet Corporation would have had data from which it could have determined just as readily as you determined the probable cost to Bethlehem of building a ship similar to Hull 253?

A. I wouldn't say just as readily.

Q. Well, in order to put Fleet officials on an equal footing, why didn't you tell them exactly why or how you arrived at your estimate with respect to the chart?

A. Well, why didn't they ask if they were interested in it?

Q. Why didn't you tell them?

A. It never dawned on me to submit it, never dawned on me to submit it to any man drawing a contract that I know of.

Q. In view of the fact that Admiral Bowles, in your opinion, was a very, very competent estimator,

didn't it occur to you when he turned to you and asked you your opinion as to the propriety of your estimate, and when he was apparently unable to submit any counter prices himself, that he was depending upon you and Mr. Powell for a statement of the probable cost to you of building the ships in controversy?

A. No. I should say it would be just the reverse.

Q. We have referred to the conference which I understand you testified took place sometime in March or April of 1929, attended by some of Bethlehem's counsel and Mr. Powell, at which the second chart, namely the chart which you constructed in Washington, was discussed; is that correct? Did you so testify?

A. Yes.

Q. And was that conference called in connection with the preparation of the trial of the case before Mr. Roberts?

A. Yes, sir.

Q. And you are sure Mr. Powell was there at that time?

A. That was the occasion of the conference.

Q. The occasion of the conference was because Mr. Powell was present, and it was, as I understand your last answer, for the primary purpose of preparing the case in connection with Mr. Powell's testimony; is that correct?

A. Yes, sir.

Q. Was the first chart which has been offered in evidence as Exhibit G-4 there presented before that conference or was a copy of it presented at that conference, or was it discussed at that conference? Did the conference relate solely to the second

chart or was there any reference made to this first chart?

A. There wasn't any conference especially in connection with the chart. It came up during the conference what had happened in Washington.

Q. Was there any discussion of the first chart at that conference?

A. I don't think so.

Q. Nothing said about it at all?

A. I believe not.

Q. Was there any other occasion when Mr. Powell was present in advance of the hearing before Mr. Roberts in which the first chart was discussed? Do you recall any other occasion?

A. No, I don't.

Q. But you are quite sure that the first chart was not mentioned at the conference to which we have referred which took place in March or April?

A. Well I feel quite sure that that was not mentioned.

Q. Is it likely that there would have been a reference to the first chart as the basis of the estimates at this conference in connection with the preparation for the trial before Mr. Roberts?

A. I don't see any reason why it should come up.

Q. Isn't it likely that there would have been some discussion as the basis of your estimates made in connection with the contract ships?

A. I doubt it.

Q. In talking about the personal relations between Admiral Bowles and Mr. Powell, as I gathered it, you did not mean to suggest, or did you mean to suggest that Admiral Bowles did not have confidence in Mr. Powell's integrity at the time of the negotiations relating to these contracts?

A. I hope you don't press that.

Q. Why, of course I will press it. Why else was it suggested by your counsel?

A. He did not have confidence in Mr. Powell's integrity.

Q. Of course we are talking about business matters, in connection with business matters. Your testimony refers to business matters?

A. Refers to business matters.

Q. And he had known Mr. Powell intimately for many years?

A. Yes, sir.

Q. The War Industry Board prices for materials were not increased during the period of the war or not after, during Government control of prices, were they?

A. Some of them were. Well, I will say they were not substantially increased.

Q. I am going to make a quotation from your testimony, which I know we all hope is the last. Your testimony before Mr. Roberts, starting at page 183 and referring to this error in the figures furnished to you by the Accounting Department with respect to material cost in connection with Hulls 158 and 159:

BY MR. BROWN:

"Q. Did you know that in applying your own factors just in the manner that you have explained that you did apply them in connection with hulls 158 and 159 that you had made a mistake in excess of $63,000 in favor of Bethlehem?

MR. EVANS: Will you read that question again?

(Question repeated.)

THE WITNESS: On what portion of the materials?

BY MR. BROWN:

Q. In excess of $63,000?

A. On what part of the materials?

Q. In other words, where was the mistake?

A. Yes.

Q. Well—

A. Was it in job 12 you are talking about, or in other materials?

(Discussion off the record between counsel.)

MR. EVANS: We do not understand, and the witness does not apparently understand what it refers to.

THE WITNESS: I don't understand just what it is, we took up job 12 first—

BY MR. BROWN:

Q. I show you a schedule which appears at page 578 of the Concession of documentary evidence which has been furnished by counsel for Bethlehem to counsel for the Government, and which gives the breakdown among other things of the costs with respect to hulls 158 and 159?

A. Yes, sir.

Q. And I ask you to take a pencil and paper and apply the method which you say you applied in preparation of this chart to these costs as shown in that schedule and tell me the result that you arrive at?

A. Well, I will have to take the breakdown of the job 12 before I can do it, because I cannot apply it just from this as it is here.

Q. The breakdown is given in your explanation?

A. Yes, if I can have it.

Q. I mean the information that you want, as I understand it?

A. Yes, the same factors are there.

(Witness used Exhibit G-154 as a basis of calculation.)

BY MR. BROWN:

Q. Let me put it this way, see if I simplify—

A. You are talking about, you are talking about the fifty-seven thousand dollars, are you?

Q. We are talking about an excess of over sixty-three thousand dollars.

A. Sixty-three, well, excess of fifty-seven, something, I can tell you right off how it is accounted for. When I received the information from the accounting department as to the cost of these ships, they had included in their accounts an item of thirty-three thousand dollars per ship, or sixty-six thousand dollars, to take care of probable cost that may come up at the guarantee period of the ships. Now, I didn't have the full accounts of these boats, and when I got from the accounting department the cost of these ships that was included therein, and when these figures were given to you they have been excluded.

Q. Well now, as I understand—

A. So that was taken as a material item which was increased 75 per cent.

Q. As I understand it, then, when you got the figures from your accounting department—

A. Yes, sir.

Q. —they included an item in excess of thirty-three thousand dollars which should not—

A. Yes.

Q. —properly have been included?

A. Yes, sir.

BY MR. WOOD:

Q. For each boat?

A. For each boat.

BY MR. BROWN:

Q. Which should not properly have been included?

A. Yes, sir.

Q. And that was made the basis of your estimate for this diagram?

A. Yes, sir.

BY MR. ROBERTS:

Q. Then I understand you to mean now that in that Exhibit G-6 that is not included, in the cost of those boats?

A. Correct.

Q. It was a contingent item on the books of the Fore River when the costs were given to you?

A. Yes.

Q. And included as actual costs and not contingent costs?

A. That is correct.

Q. That is, you thought it was actual costs?

A. I didn't know about it. They gave it to me as costs.

BY MR. BROWN:

Q. So that computation for the cost of hulls 158 and 159, applying your own factors, and your own methods, should have been in excess of $33,000 less than the price estimated by you as the cost of such ships?

A. Approximately so, yes."

You so testified, did you not?

A. Part of that don't sound right to me.

MR. BROWN: Will it be agreed this is a correct report of Mr. Brown's testimony covering that item or do we call the stenographer?

MR. EVANS: I am perfectly willing to agree that that is the transcript of the testimony and that it is accurate so far as I know. If you want to call Mr. Brown's attention to anything there go ahead and do it. I will admit the transcript is accurate.

BY MR. BROWN:

Q. In referring to the costs which you got from the Accounting Department, you are referring to costs which were given to you by the Accounting Department after your re-employment by Bethlehem in 1924, are you not?

MR. EVANS: Where do you get that? Will you point out anything in his testimony which substantiates your statement?

BY MR. BROWN:

Q. Having had your customary moment of reflection, will you please answer that question?

MR. EVANS: I think, if this testimony is to be used to contradict anything that the witness has said here, Mr. Brown should call his attention to the particular thing he says contradicts it.

MR. BROWN: It does not. I asked him when he got the data from the Accounting Department.

THE MASTER: When you speak of costs that he got from the Accounting Department,

are you referring to the costs that he got after he came back, which he checked?

BY MR. BROWN:

Q. This testimony that I have quoted refers to information from the Accounting Department as to the cost of these ships which were furnished you and which included this item which should not have been there. That is correct, is it not?

A. That is correct.

Q. And I say that that information, according to my information, was information which was furnished to you by your Accounting Department after your re-employment by Bethlehem in 1924, was it not?

A. Yes.

MR. EVANS: The incorrect information?

MR. BROWN: Just a moment. I am cross examining.

MR. EVANS: I want the witness to understand the question.

THE MASTER: That can be taken up afterwards.

MR. BROWN: His answer to that question was yes.

BY MR. BROWN:

Q. In furnishing that explanation to Government counsel in advance of the trial why was no reference made to that mistake?

A. Why I believe that I did not know of that mistake until the information was worked up as asked for by the Government.

Q. When did you first know of the mistake?

MR. EVANS: He is trying to tell you.

THE WITNESS: That is what I am trying to tell you.

MR. BROWN: Let him alone. This is important.

BY MR. BROWN:

Q. When did you first know of the mistake?

A. The first time I knew of the mistake was when the information was worked up or the Government asked for the cost of the ship. That is the first I knew that there was a mistake.

Q. Was that when the chart was first submitted to the Government?

A. What chart?

Q. Your chart or photostatic copy of your chart, when it was furnished to the Government in August of 1927; is that when you knew of this mistake?

A. I don't know.

Q. You think it was before that time or afterwards? May I refresh your recollection? The Government requested information as to cost data used by you as the basis for your estimates in January, 1927. Now with that date in mind can you tell us when you first realized this mistake that we are discussing?

A. I first realized the mistake, and you can check it up, when the sheets were prepared that gave you the final cost of the vessels divided by material I think and labor and expense and A. S. & G.

Q. That was furnished to the Government in August, 1927?

A. Well, then it must have been some little time prior to that.

Q. When you first realized the mistake?

A. That I first knew about it.

Q. And from that time to May, 1929, as far as you know, was any reference to this mistake ever made by you to Bethlehem's counsel? Did you ever notify Bethlehem's counsel of this mistake after your discovery of it some time about August 1927, and prior to the hearing before Mr. Roberts in June, 1929?

A. I talked to Mr. Robison about it, yes.

Q. You told him all about that mistake?

A. Yes.

MR. BROWN: I think it is a fair statement that I might make a record that there was absolutely no mention of the mistake to Government counsel prior to the testimony that I have quoted from Mr. Brown's testimony given, before Mr. Roberts at the prior hearing in this case.

"By Mr. Brown:

Q. That spot on your original chart on the 14,950 ton line, designates with the letters S. P. was intended to represent the price of $2,736,000., was it not?

A. Yes, sir.

Q. And in making up your explanation, referred to as Exhibit G-154, it is a fact, is it not, that in order to arrive at a price of $2,736,000. as your estimate of the cost of the ship, it was necessary for you to make a mathematical error in the amount of $10,000., was it not?

A. Yes, sir.

Q. Will you explain to us, in view of the fact that such a mathematical error was made by you in connection with your explanation or the preparation of the explanation known as

Exhibit G-154, which mistake was necessary in order to make your estimate coincide with that spot, that it appears that that spot likewise hits what you say was your original estimate for the tanker? In other words, did you make the same mathematical mistake, do you think, in the original estimate for this spot that you afterwards made in connection with the estimation known as Exhibit G-154? Do you think it likely that you made such a mistake?

A. I didn't make any mistake in the figures that I used.

Q. At what time, in connection with your explanation?

A. At either time.

Q. Well, in connection with your explanation you made a mathematical mistake of $10,000. as you have just testified?

A. Well, my dear man, if you ever used a slide rule you will think it is silly even to talk about that.

Q. Referring to your Exhibit G-154, in paragraph two of that Exhibit, in reaching your estimate of $2,736,000. for the tankers of 14,950 dead weight tons, you state that the equation factors used by you in connection with Hull 253 were applied to the following reported items of cost: $257,000. for materials on Job 12; $328,000. for other materials, and $451,000. for labor cost; and I ask you now to take your pencil and paper, which I will give you, if you think it necessary, and apply the factors which you used in connection with Hull 253 to those costs and tell me whether in reaching the figure of $2,736,000., you have not made a mathemat-

ical mistake in the amount of $10,000., and whether your total should not have been $2,746,000.?

A. Probably is. I will admit the mistake.

Q. And do you think it likely in connection with the original preparation of this chart, when you arrived at a spot and plotted a spot exactly on the line representing the cost of $2,736,000. instead of $2,746,000, that you made exactly the same mistake that you made some six years later in connection with your preparation of the present explanation? Is that correct?

A. Yes."

MR. BROWN: I offer in evidence contracts 158 and 159 produced by Bethlehem on request and ask that they be marked Exhibits G-205 and G-206.

(Admitted without objection and marked Exhibits G-205 and 206.)

Recross Examination

BY MR. EVANS:

Q. In order to arrive at the approximate cost of a 14,950 ton tanker, as I understand it, you had to do a good deal of multiplying, did you not?

A. Yes, sir.

Q. Well, your job was to multiply 267,000 by a factor of increase of 2.66. That was one job, wasn't it?

A. Yes.

Q. And your next job was to multiply 328,000 by a factor of 1.75?

A. Yes, sir.

Q. And your last job was to multiply 451,000 by a factor of 1.68?

A. Yes, sir.

Q. Now how did you do that, by longhand mathematics or did you use one of these iniquitous slide rules?

A. Used a slide rule.

Q. And is an error of $10,000. in dealing with figures of that size a common error to make?

A. It was as close as you would expect to get.

Q. Were you using whole figures or were you carrying out to decimals?

A. You couldn't carry it out to decimals.

Q. But if you were multiplying by decimals you would have to carry it out to decimals, wouldn't you, if you were using longhand?

A. Yes.

Q. Mr. Brown asked you if you did not make up these estimates with the idea they were going to be used for lump-sum contracts. At the time you made these estimates did you know Mr. Powell's feeling about taking a lump-sum contract?

(Objected to.)

Q. Had you taken part in any discussion with Mr. Powell regarding lump-sum contracts, not for these boats but generally, whether he would take lump-sum contracts on anything?

A. Yes, I discussed with Mr. Powell the type of contract on which we would operate.

Q. You had discussed that in connection with the Navy Destroyer contracts, hadn't you?

A. Yes.

Q. Which had been closed although not executed some time before?

A. That is right.

Q. And you knew perfectly well Powell had said he was not going to take any lump-sum contracts on new construction, didn't you?

A. Yes, sir.

Q. And you had that in mind when you made up these estimates of cost?

A. Yes.

BY MR. BROWN:

Q. And I suppose that is why Mr. Powell offered lump-sum prices on the Union stock ships and also on additional Sparrows Point stock ship as late as December 14th and December 20th, 1917, on a lump-sum basis, because he had told you considerable time prior that under no circumstances would he take work, new work, on a lump-sum basis?

A. Yes.

MR. EVANS: Did you hear that question? Well, never mind.

(Adjourned to 10 o'clock A. M., April 2, 1931.)

HARRY BROWN recalled.

BY MR. BROWN:

Q. I would like to ask Mr. Brown if he did not testify as follows at page 133 of the previous proceeding, in answer to the following question by Mr. Wood: "Who was Admiral Bowles? A. Head of the Construction Division of the Shipping Board, the man with whom we did our business." You did

so testify, did you not?

A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir.

MR. BROWN: I offer in evidence copy of a letter dated June 30, 1928, addressed to Ralph B. Evans, Esq., by W. W. Robison, under the letterhead of Cravath, De Gersdorff, Swaine and Wood, a copy of which was furnished to counsel for the Government by Mr. Evans.

Copy of letter admitted in evidence and marked G-207.

JOSEPH A. HONSICK, having been duly sworn, was examined and testified as follows:

BY THE MASTER:

Q. Your full name and address, please?

A. Joseph A. Honsick; No. 9 East Underwood Street, Chevy Chase, Md.

BY MR. HALLETT:

Q. What is your business and what do you do at the present time?

A. I am an auditor for the United States Shipping Board and Merchant Fleet Corporation.

Q. How long have you been with the Fleet Corporation?

A. About eleven years.

Q. Have you been assigned, or were you assigned, to do work in connection with the Bethlehem accounts?

A. I was.

Q. When?

A. Along about June 8, 1920.

Q. And on what work were you assigned?

A. I was assigned to audit the operating expense at the five Shipyard plants; also the Administrative, General and Selling Expense at the home office at Bethlehem, Pennsylvania; and also to audit the Depreciation and Plant Accounts at all the Shipyard plants and the home office.

Q. Were you in charge of the audit which you have just outlined?

A. I was in charge of the field forces at that time, yes, sir.

Q. And you had a number of men under you?

A. Yes, I had quite a large crew.

Q. When did you say you started in with that audit?

A. About June 8, 1920.

Q. In making these audits were you in touch with the Bethlehem representatives at the different plants and at the home office?

A. Oh, yes, I came in contact with the Bethlehem representatives at all the plants, at the home office, and frequently at the Fleet Corporation district offices.

Q. With which representatives of Bethlehem did you come in contact in settling the problems that arose?

A. I came in contact at the home office with Mr. Hauck; Mr. Stewart—

Q. Mr. Hauck; who was he?

A. Mr. Hauck, I think, was Assistant Controller.

Q. Who else?

A. Mr. R. H. Transue at the home office, who I think was assistant to Mr. Hauck. I came in contact at the Fore River plant with Mr. Derr.

Q. Who was he?

A. He was the Works Accountant. Mr. Brecht; he was Assistant Works Accountant. Also came in contact with Mr. John J. Ford. I think he was assistant to Mr. W. L. Lewis, who was one of the assistant controllers at the home office.

Q. Was there any one man of Bethlehem who was in charge, or appeared to be in charge, of the conduct of the settlement of these problems for Bethlehem?

A. In the early part of the audit I made quite a number of settlements concerning overhead with Mr. Ford. Later on, in the latter part of 1921 and the early part of 1922, Mr. H. G. Smith seemed to have charge of settling matters that were in dispute at the time.

Q. That is Mr. H. G. Smith who is here now?

A. Yes, sir.

Q. Did you know at that time what his position was?

A. I think he was General Manager, or Vice-President and General Manager, or some such title. I am not quite sure which it was.

Q. Did you have any relations with Mr. Geiss?

A. Yes, Mr. Geiss very frequently accompanied Mr. Smith during the settlement of these items, and sometimes I came in contact with Mr. Geiss when he was not with Mr. Smith.

Q. Mr. Geiss is here?

A. Yes, sir.

Q. What was his position at that time?

A. I do not know what his official designation was, but I understood he was attached to the Controller's Department.

Q. During the year 1921 were you present at any conferences at which Bethlehem representatives

were present, Mr. Smith and Mr. Geiss, in which the subject of wage reimbursement came up?

A. Yes, there were a number of wage conferences in 1921 that came up, in which Mr. Smith and Mr. Geiss were present.

Q. What was the controversy with respect to wage reimbursement?

A. The one big controversy that I recall very distinctly was the matter of what the base rates were for the contract ships at the various plants.

Q. Why was that important?

A. It was important in that the estimated price in the contracts was to be increased by the difference between the base rate and the current rate existing during the production of the ships.

Q. In other words, the base prices named in the contract were to be increased by the amount of the cost of labor over and above the rates at which those base prices had been fixed; is that what you mean?

A. That is right.

Q. Was the subject taken up at those conferences as to what the actual base rate had been at which these base prices had been fixed?

A. Well, yes, that is what the big job was, was to try to determine what the base rate was for the various contracts at the various plants.

Q. What do you mean by the base rate at the plants? Do you mean the base rate that was actually used in determining those base prices was what you were trying to determine?

A. That is what we were trying to determine.

Q. In connection with the contracts and the terms of the contracts, as I recollect it, the term in the contract was to the effect that any increase over

the rates in force and effect on January 3rd, 1918, as a result of the orders of some board which was named there—any increase over those rates would be added to the base cost; is that right?

A. That is right.

Q. And you had the problem of determining, first, what rate was meant by that contract designated as of January 3, 1918, named by that board?

A. That is correct.

Q. Was there a dispute as to what the terms of that contract meant in that definition of that rate?

A. There seemed to be some dispute about that.

Q. And were the parties attempting to determine what had been meant by that particular phrase used in those contracts?

A. Yes, they had.

Q. And in determining the interpretation of that phrase, was it material to find out what actual rate had been used in arriving at these prices?

A. Yes; we tried to find out what the actual rate was that was used in the estimates that were made.

Q. And in attempting to find out the actual rates that were used by Bethlehem, were any requests made by Bethlehem representatives to furnish you figures and facts concerning the estimates?

A. My recollection is that any number of times we asked for the estimates supporting the prices set out in the contracts, particularly in connection with the labor element.

Q. Can you remember any occasion on which these requests were made particularly?

A. Well, I remember a number of requests that were, two of them particularly, one in August of 1922 and another one in October, 1922.

Q. Where were these conferences held?

A. The August conference was held in the board room at the office of the Shipping Board and the second conference that I mentioned, in October, was held on the first floor of the Shipping Board.

Q. Who was present at the August conference; do you remember?

A. For Bethlehem I think it was Mr. Smith and Mr. Geiss. I believe Mr. White was there and Mr. Leonard. Then I think Mr. Berkely, or some such name; and for the Shipping Board Mr. Bullitt, Mr. Lisson, generally Mr. Pitts—

BY MR. EVANS:

Q. What do you mean, "generally Mr. Pitts"?

A. Wait a minute, this is a specific conference, Mr. Aron, Harold G. Aron, was present, and myself.

BY MR. HALLETT:

Q. Is that all you can remember being present at that time?

A. Offhand, that is about all I can remember.

Q. What took place at that conference? What was said, as far as you can remember, with respect to the subject we have been talking about?

A. Well, the matter of base rates was always a good subject to talk about and there was always a considerable discussion about it. It came up very frequently, and on account of the low base rate that Bethlehem was contending for, it did not seem to us that that could be the proper base rate and we always had it in our minds, at least those I talked to on our side—

MR. EVANS: I do not think we are concerned with what you had in your mind. Just tell us what was said at this conference.

THE WITNESS: As I say, it was contended at the conference that Bethlehem's base rates, that is, the base rates used for the contracts, were much higher than the contention made by Bethlehem, and Bethlehem were asked at that conference if they could produce the estimates, and, as I recall, the answer to that request was that they did not have any, that they were made on the backs of envelopes.

BY MR. HALLETT:

Q. Who made that statement, do you remember?

A. My recollection is that Mr. Geiss made the statement at the time.

Q. Was Mr. Smith there at that time?

A. Mr. Smith was there.

Q. Were there any comments made by any of the Bethlehem people after that remark?

A. No, because we had heard prior to that—

MR. EVANS: I object to what you had heard. Just confine yourself to the conversation you had at the conference.

THE WITNESS: All right, no.

BY MR. HALLETT:

Q. Had you been told prior to that that there were no estimates?

MR. EVANS: By whom?

MR. HALLETT: By representatives of Bethlehem.

BY MR. HALLETT:

Q. Had you been told that?

A. Yes, we had been informed that there were no estimates.

Q. By whom had you been informed, if you recollect?

A. Exactly who told us I could not say, but during these labor conferences, when the subject of base rates came up, we asked on more than one occasion if we could see the estimates, and somebody on the Bethlehem side replied that "we did not have any estimates."

Q. Did you ever see any estimates?

A. The only estimates that I saw were for Contract 465.

Q. Were those for the troop ships?

A. Yes, sir.

Q. And these statements that you speak about were made in conferences which were being held by you with Bethlehem representatives for the purpose of trying to arrive at a settlement of the problem?

MR. EVANS: What problem?

MR. HALLETT: Of the wage problem.

A. Yes, sir.

BY MR. HALLETT:

Q. What was the second occasion that you remember particularly, in October?

A. That was the October conference held downstairs.

Q. Downstairs where?

A. At the offices of the Shipping Board.

Q. In Washington?

A. Washington, D. C., and there seemed to be—

MR. WOOD: Not "there seemed to be." Let us have what was said and what was done, and not what seemed.

BY MR. HALLETT:

Q. Who was present, first; do you recollect?

A. At those conferences I think again Mr. Smith was present from Bethlehem and Mr. Geiss, and for the Shipping Board Mr. Bullitt, Mr. Adamson, Mr. Lisson and myself. There were a number of others on both sides, but I cannot recall their names at this time.

Q. What took place at that time?

A. Again came up the question as to what the base rate was for the contract ships, and Mr. Adamson asked to have the estimates for the contract ships produced and Mr. H. G. Smith, for Bethlehem, answered that they did not have estimates in detail and no estimates were produced as a result of that request.

Q. As I understand it, you never were given any estimates from Bethlehem of the base costs of these ships?

A. No, we were not.

THE MA 'TER: Does your question relate solely to the labor item, or does it relate to the other items? So far as I understand the witness the investigation he was engaged upon simply entered into labor items.

MR. HALLETT: That is where it came up particularly, as the occasion for the demand.

THE MASTER: Your question is rather general, and if you mean it to be general, all right.

MR. HALLETT: I mean it so.

BY MR. HALLETT:

Q. Did you ever receive any estimates of the labor costs that entered into the base prices?

A. None except on 465.

Q. And, as I understand it, you were continually asking for those estimates and that evidence, and were told that they did not have it in detail, or did not have it?

MR. EVANS: I object to that question. The witness has told what was done.

BY MR. HALLETT:

Q. In spite of what you were told, you continued to make those requests?

MR. EVANS: I object. Let him state what was done.

BY MR. HALLETT:

Q. Why did you make these requests, in the light of what you had been told?

A. Well, we made those requests because it was our firm conviction that the base rate was much higher—that is, the base rate used to estimate the contract prices, was much higher than Bethlehem represented it to be when we were arriving at the base rates at the various plants, and for that reason we kept constantly asking for estimates.

BY MR. BROWN:

Q. Having been told once that there were no such estimates, why did you again ask for such estimates?

A. I did not think that where millions of dollars, I don't know, about one hundred fifty or one hundred seventy-five millions of dollars of contracts would be let, that there would be no estimates made, at least in such form as where we could get the labor.

Q. Was any data with respect to the basis of the estimates submitted by Bethlehem ever fur-

nished to you, with the exception of the data relating to Contract 465?

A. Will you repeat that question?

(Question read.)

Q. Were any working papers or cost data ever submitted to you showing the basis for the estimates originally submitted by Bethlehem in connection with these ships in controversy?

A. None that I know of.

Cross Examination

BY MR. EVANS:

Q. You mentioned a Mr. Bullitt as being present at the two conferences about which you have particularly related, one in August and the other in October of 1922. I wish you would tell us who Mr. Bullitt was?

A. Mr. Bullitt was an attorney.

Q. Can you tell us his full name?

A. William Marshall Bullitt.

Q. Yes, and he was an attorney?

A. Correct.

Q. And was he present at those conferences in his capacity as attorney?

A. I do not think so. I think he was—

Q. What was the occasion for his being there?

A. To discuss the Bethlehem problems.

Q. Did he represent Bethlehem?

A. No.

Q. Did he represent the Fleet Corporation?

A. I will tell you, I really do not know exactly how Mr. Bullitt operated.

Q. Let us see if you do not know, Mr. Honsick.

Don't you know that this whole matter was referred by the Fleet Corporation to Mr. Bullitt for his decision?

A. He made some decision. I did not know exactly, though, how he was employed.

Q. You knew that he was counsel for the Fleet Corporation at that time, did you not?

A. He was counsel for the Fleet Corporation, that is correct.

Q. And you knew that the Fleet Corporation had referred this matter for his decision, or at least for his recommendation?

MR. BROWN: Wait a minute. What matter?

MR. EVANS: The matter of the settlement of the claim of Bethlehem against the Fleet Corporation on the requisition and contract ships.

BY MR. EVANS:

Q. You knew that, did you not?

A. I was not there when he was employed or when he was assigned to the task, but from the hearings that took place at the time I presume that is what he was there for.

Q. Yes, and you have since heard that that was a fact, have you not? You have been told?

A. He made a final report, correct?

Q. Yes, and these hearings to which you have referred were hearings before him for the purpose of enabling him to determine the facts and make an intelligent report; is not that correct?

A. Yes.

Q. You mentioned a Mr. Lisson; will you tell us who he was?

A. Mr. Lisson was an auditor for the Fleet Corporation. He was my superior during part of the time.

Q. And was he assisting Mr. Bullitt in this investigation that Mr. Bullitt was making?

A. He performed dual duties. He acted as representative of the Controller, of the Controller's Department and of the Controller, and he did assist Mr. Bullitt in Mr. Bullitt's getting out his report, furnishing him with papers and so forth.

Q. How long did your audit require?

A. You mean that audit on which I was particularly assigned, or which audit? There were several going on at the same time.

Q. Of Bethlehem?

A. Yes.

Q. Several audits of Bethlehem in connection with the requisition and contract ships?

A. No, that is not what I mean.

Q. What do you mean?

A. I mean that there was a current audit going on during part of the time, that there was a wage increase audit which was handled by a separate crew, and that there was an audit of the overhead or operating expense, administrative and general and depreciation going on at the same time. Now which audit do you have reference to?

Q. By different crews of auditors?

A. Yes.

Q. All there representing the Fleet Corporation?

A. Yes.

Q. With which particular audit were you concerned?

A. In the beginning I was concerned primarily with the audit of the Overhead, the Administrative

and General Expense and Depreciation, but in the latter part of 1921 and the first half of 1922 I came in contact with the wage matters and some material matters.

Q. When did you begin your work, your auditing work of Bethlehem?

A. About June 8, 1920.

Q. And when did you finish?

A. Along about July, 1922.

Q. And was that the time that the audit was completed, and when I refer to audit I mean to use that term to include what you have referred to as three separate audits?

A. Yes.

Q. And during the period that you and other auditors were auditing Bethlehem's accounts, you had full access to their accounting records, did you not?

A. I had access to most of the records, but not all their records.

Q. Were there any records that you were not allowed to have access to?

A. Yes.

Q. What?

A. I asked for the bonuses, a list of all the bonuses that were paid at the home office. I never got that.

Q. We were not charging you with any bonuses, were we?

A. There were bonuses charged up on the expenses of the corporation.

Q. But did that appear in any claim that we were making against the Fleet Corporation?

A. They asked us to absorb a part of the Ad-

ministrative, General and Selling expense, and they were a part.

Q. Oh, you thought they were a part of the A. S. and G?

A. I did not think so; they were there.

Q. They were there?

A. Yes, sir.

Q. How did you know they were there?

A. I examined the books.

Q. Oh, you examined the books, but they would not let you see them?

A. I examined the books, but I did not get a list of the bonuses. They were not listed in the books.

Q. How did you know that the bonuses were in the A. S. and G., then?

A. There was a total for bonuses.

Q. Oh, the total?

A. The total, yes, sir.

Q. What other books did you ask to see and were not permitted to see?

A. I asked for some records at Fore River.

Q. What records?

A. In connection with some expenditures that Mr. Wakeman up there made.

Q. Who is Mr. Wakeman?

A. I think he was the plant manager.

Q. Yes?

A. I also asked Mr. Bankhart, who was the Works Accountant at the Harlan plant, for some records that were withheld for a considerable period before we got them. I also asked for records at the Moore plant that were not made available, in connection with the marine auxiliaries.

Q. But there were no records regarding pay-

ments for labor that you asked for and were not permitted to see, were there?

A. You say the payment of labor?

Q. Well, payrolls, I will call it that. That, I suppose, would be the record of the payment of labor, would it not, payrolls?

A. Payrolls at the plants were, as I recall, always available, yes, sir.

Q. There had been an audit made previous to the audit in which you participated, had there not?

A. There was a current audit made prior to my coming there, yes.

Q. And by current audit you mean that during the period of construction, both on requisition vessels and on contract vessels, Bethlehem's accounts were currently audited by Fleet Corporation auditors?

A. Your question is a little broad there.

Q. Then give me the answer. You tell me what the fact is.

A. Because in connection with some of the requisition ships, particularly those that were on the lump sum basis, we did very little auditing, if any, except perhaps for Changes and Extras.

Q. With that exception there was a current audit made, or with that explanation there was a current audit made?

A. Yes, sir.

Q. So that the audit in which you participated was really a reaudit, was it not?

A. Substantially, yes.

Q. After you had completed your audit and you had had these various conferences before Mr. Bullitt, the matter was referred to him by the Fleet Corporation for his recommendation and decision, was it not?

A. Well, I presume it was.

Q. Don't you know that it was?

A. I was not there when the case was assigned to Mr. Bullitt and did not hear what he was told or what instructions he got.

Q. Are you with the Fleet Corporation now?

A. Yes, sir.

Q. Have you been with them continuously since 1921?

A. I have been with them since the latter part of 1919.

Q. You have been with them continuously?

A. Yes, sir.

Q. Don't you know that on March 3, 1923, Mr. Bullitt did submit his opinion to the Shipping Board?

A. Yes, sir.

Q. Have you ever seen the report?

A. Yes, sir.

Q. Then you did know that he made a report?

A. Oh, I knew he made a report. I do not deny it.

Q. I show you what I am informed is a copy of that report and I will ask you whether you can tell us whether it is or is not a copy of Mr. Bullitt's report which he made to the Shipping Board?

A. I will tell you, I do not recognize it in this form because I never saw it in this form.

Q. Have you got a copy of the report which you can produce?

A. I believe I have a printed copy in my office.

Q. Can you get it and produce it, unless counsel are willing to agree, subject to verification, that this is a correct copy which I have here?

MR. BROWN: I want first to know what Mr. Evans is going to do and whether he wants

to introduce the entire record of the Bullitt proceeding. If he does, and if the Master thinks it might aid him in the decision of this case, we will not object.

MR. EVANS: That is what I am going to do. My present question is whether for that purpose we might use this report.

MR. BROWN: I think that I can get a copy of the record of the Bullitt proceeding which both sides will agree upon as being authentic, and it can be offered when that is gotten, if it is admissible and if the Master decides to have it.

THE MASTER: As I understand, at the moment Mr. Evans is using the copy which he says is a copy of the Bullitt Report.

MR. EVANS: Yes.

THE MASTER: Not of the entire proceeding.

MR. BROWN: Let us assume it is for the present.

THE MASTER: And for the purposes of this examination I understand Government's counsel will concede that that is a correct copy, subject to verification hereafter.

MR. BROWN: That is all right.

MR. EVANS: That being so, Mr. Honsick, I do not think you need concern yourself about the thing. I will ask that that be marked for identification.

MR. BROWN: Is that a record of the entire proceeding?

MR. EVANS: No, just the report.

THE MASTER: For the purpose of identification, the document offered is the opinion of William Marshall Bullitt on disputed claims between Bethlehem Shipbuilding Corporation, Ltd., and United States Shipping Board Emergency Fleet Corporation, dated March 3, 1923. I will mark that now for purposes of identification as B-100.

BY MR. EVANS:

Q. Mr. Honsick, you have been about shipyards a good bit, I suppose. The expression that an estimate was made on the back of an envelope is quite a common expression among shipbuilders, is it not?

A. I never heard it before.

Q. You never heard it before?

A. No, sir.

Q. You did not know that among shipbuilders that had a more or less technical meaning, which is that it was an estimate that was not made up in detail, as estimates ordinarily are made up in normal times?

A. No, I never heard that.

Q. If it had that significance, you did not so understand it when Mr. Geiss told you that Bethlehem's estimates on these contract ships were made up on the back of an envelope?

A. I did not know exactly what he meant by it, other than that there were no estimates.

Q. You did not take it literally; did you, that they had been made on the back of an envelope?

A. I did not think that he exactly tore off the front end of an envelope and wrote it on the back of that. He might have used a yellow piece of paper, like you have in front of you.

Q. I was wondering whether you wanted the Master to understand that you and the other representatives of the Fleet Corporation took that statement of Geiss to mean literally what it said?

A. Not exactly that way, Mr. Evans.

Q. What you were trying to do was to find out what the base rate, that is, the base wage schedule, was in the various Bethlehem Yards on January 3, 1918, were you not?

A. Well, that is one of the things that we were trying to find out.

Q. That is the only thing that you needed to start with in order to arrive at the amount of increase in the wage schedule which occurred subsequent to January 3, 1918, by reason of the various wage increases that were ordered to be put in effect by the Labor Boards; is not that right?

A. As I recall, we needed the Navy Yard scale. We also had to have payrolls to see how that Navy Yard scale was applied, and there was other data that was necessary in connection with it in order to determine the base rate.

Q. Well, now, let us see. The East Coast contracts, which included, of course, all boats built at Fore River, at Sparrows Point, at Harlan and at Moore, all contained this provision, did they not, that the estimated cost is based upon the wage scale as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States at Boston in the case of Fore River, Brooklyn in the case of Moore, Norfolk in the case of Sparrows Point, and Philadelphia in the case of Harlan; is not that correct?

A. That is my recollection of the wage clause.

Q. And what you were trying to ascertain was

what was the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at those various Navy Yards; is not that correct?

A. We could get the wage scale. What we wanted was the average rate from which to begin to determine what the increase was.

BY MR. BROWN:

Q. To be added to the base price in the contracts on account of labor?

A. Correct.

BY MR. EVANS:

Q. What do you mean, what the average rate was?

A. Well, take a wage scale. A wage scale has many rates in it, running in variations for different crafts. Particularly in the Navy Yard scales that were in effect at that time there were three rates, practically, for every craft. What we were interested in finding was one rate for the plant, arising out of the application of that scale if it was applied.

Q. Was that a difficult matter to determine?

A. Very difficult.

Q. Why?

A. Because the work was so voluminous, because there was a disagreement between the crafts, what they meant on the Bethlehem payrolls and as they were on the wage scales. Bethlehem had crafts on their payrolls that were not mentioned in the Navy Yard scales. There were Navy Yard crafts that were not mentioned on the Bethlehem's payrolls, and there was a continual wrangle as to what the various scales, that is, the scale that Bethlehem was using, or rather the rates that they were using, were as compared with the Navy Yard scale.

Q. The Navy Yard wage scales were stated in terms of cents per hour, were they not?

A. My recollection is they are by day rates.

Q. Day rates; well, dollars per day?

A. Yes.

Q. And there was one wage schedule that applied to riveters, we will say?

A. Yes.

Q. And there was another wage scale that applied to—

A. Caulkers, chippers.

Q. Caulkers, chippers and so on all down the line?

A. Shavers and so on.

Q. And one of the problems was to determine whether a particular man at the Fore River plant, we will say, got a riveter's wage or whether he got a chipper's wage; is that right?

A. No, not necessarily.

Q. What was your problem?

A. For instance, one of the problems was this. The Navy Yard scale would figure out for a machinist, one class of machinist, 46 cents, and the next grade above that was 56 cents and the grade above that was 59. There were three rates, 13 cents apart, and 3 cents between the top and the next to the top. But when we examined the Bethlehem payrolls, as I recall, they did not pay those three rates. They paid below the Navy Yard scale in some cases. They paid in between. For instance, they might have 47, 48, 49, but there was no such rate in the Navy Yard scale. They had one or two men above, but very seldom did we find them above the Navy Yard scale. That was one of the problems.

Q. By the way, when was the first increase in

wage schedule on the East Coast after January 3, 1918?

A. I think there was an award in March that I think was revised in April, 1918.

Q. What you were concerned with, then, was the application of the Navy Yard wage schedule to the different Bethlehem Yards?

A. That is right.

Q. And it was a different problem at each Yard?

A. Correct, because they were different rates.

Q. You were not concerned with earning rates, were you, you were concerned with labor rates; is that right?

A. I had not heard anyone on the Bethlehem side ever mention an earning rate until some time after the audit was completed.

Q. I do not think that is an answer to my question, but you know the difference between a wage rate or a wage schedule and an earning rate, do you not?

A. What is the difference?

Q. Don't you know?

A. There may be some difference, but I do not know exactly what you mean.

Q. I am not asking you what I mean. That would be an impossible question. I am asking you whether there is any difference between a wage rate and an earning rate?

A. There could be a difference.

Q. Is there not a well recognized difference?

A. Are you asking me?

Q. Yes.

A. Is there a well recognized difference?

Q. Yes.

A. It might be at some plants.

Q. You have evidently got something in your mind. Tell us what you think the difference is between a wage rate and an earning rate?

A. A wage rate is a rate, as I would take it, an hourly rate fixed for a particular job or craft, or a rate picked out of a scale. That would be the wage rate.

Q. That would be the wage rate?

A. Yes.

Q. What is the difference between that and the earning rate?

MR. HALLETT: You mean the plant earning rate or an individual earning rate?

MR. EVANS: I don't care, he can answer anything he pleases.

A. I do not know exactly what you mean by an earning rate.

Q. I am not asking you what I mean.

MR. BROWN: Explain why that is. Let us make progress, Mr. Honsick.

THE WITNESS: If he means an earning rate perhaps by merely taking a payroll, as is frequently done, that is, the wage roll of a plant in dollars and cents, and dividing it by all the hours worked by all of the men, that might be an earning rate. You might call it that.

BY MR. EVANS:

Q. Would that be the same thing as the wage rate?

A. The wage rate, you may be paying man rates per hour. You may be paying two dozen.

Q. Would it be the same thing as the average wage rate?

A. That might not be so. It might not be the same as the average wage rate resulting from the application of the scale.

Q. You testified in this proceeding before Mr. Roberts too, did you not?

A. I did.

Q. But you did not tell us anything about this audit that you made, or this request that you had made to various representatives of Bethlehem for their estimates at that time, did you?

A. I do not believe anybody asked me.

Q. I do not think that anybody asked you either, Mr. Honsick, but the fact is that you were neither asked nor did you volunteer the evidence, did you?

A. If I was to sit down here—

MR. BROWN: We will concede that fact.

BY MR. EVANS:

Q. That is a fact, is it not?

A. That is a fact.

Q. At the last hearing you produced an exhibit, which was offered in evidence by the Government and it is marked G-46, a copy of which I hand you. Am I right?

A. That is the exhibit I made up.

Q. The purpose of making that up was to show the relation between the actual cost of the contract ships that Bethlehem built and the estimated or base cost stated in the contract?

MR. BROWN: We object to this unless it relates to the matter of the direct examination.

THE MASTER: I presume you will agree that it is a valid objection?

MR. EVANS: I presume it is.

MR. BROWN: You can call him as your own witness.

THE MASTER: I will sustain the objection.

MR. EVANS: I would like this marked for identification. It may take the same number that it took before, G-46.

Redirect Examination

BY MR. BROWN:

Q. As I understand it, in connection with the settlement of the Bethlehem claims arising out of the contracts in controversy, a controversy arose as to the amount to be added to the base price named in the respective contracts as including increased labor cost, is that correct?

A. Yes, sir.

Q. And in connection with that controversy, as I understand it, Bethlehem, through its representatives, took the position that one rate had been used in connection with their original estimates for these ships in controversy, and the Fleet Corporation contended that a different rate had been used; is that correct?

MR. EVANS: That is objected to. That is certainly not redirect examination.

MR. BROWN: It is absolutely on this subject and is merely an attempt to summarize what he has said.

THE MASTER: I think so far as it is relevant, whether it is redirect or not, he is still the

Government's witness and he can go ahead and elaborate on his previous testimony.

MR. EVANS: Then I object to the testimony on the ground that it is leading.

MR. BROWN: This is rebuttal, and I have a right, in summarizing the testimony of the witness, to offer leading questions. I am merely trying to bring it out of the confusion it has gotten into.

MR. WOOD: That is not a summary of anything he ever said.

MR. BROWN: As far as the testimony of this witness is concerned, it was intended to be confined to a very simple issue and I am trying to bring his testimony back to that issue. I am merely summarizing what has been said, which is directed to the only issue with which the Government is concerned.

BY MR. BROWN:

Q. I would like to know, with respect to this controversy as to base rates applicable to these contracts in controversy, if it is not a fact, as you have already testified, that Bethlehem took the position that one base rate was applicable and the Fleet contested that position and took the position that another base rate was applicable?

MR. EVANS: That is objected to as being leading.

THE MASTER: We will sustain the objection to it as leading, but I think if counsel chooses to put it in as a summary and Mr. Evans desires to object to it and put his own summary in, we will take the summary of

counsel rather than to go through all this thing again.

MR. EVANS: That is true, but it seems to me a summary should take the form of argument and not testimony.

THE MASTER: I agree to that.

MR. EVANS: It is a new rule of practice that counsel can cross examine his own witness simply to clarify his testimony.

THE MASTER: Quite correct.

BY MR. BROWN:

Q. As I understand you have just stated, there was a controversy as to the base rates applicable in determining the amount of increased cost to be added to the respective base contract prices named in the contracts in controversy; is that correct?

A. Yes.

Q. And there was a difference of opinion between the Bethlehem representatives the Fleet Corporation representatives as to the correct base rate for use in determining that controverted question, was there not?

A. Yes, sir.

Q. The Bethlehem representatives took the position that a certain base rate was applicable with respect to the respective contracts for the purpose of determining the amount of increased labor cost to be added to the respective base prices named in the contracts, did they not?

A. Yes, sir.

Q. And that position was controverted by the Fleet representatives, who contended that a different base rate was applicable to the contracts in controversy, for the purpose of determining the amount of

this increased labor expense to be added to the base prices named in the contracts; is that correct?

A. Yes, sir.

Q. As I understand it, in the conferences in 1922 which were attended by Mr. Smith and Mr. Geiss, this question as to the disputed base rate applicable to the contracts in controversy, for the purpose of determining this increased labor cost to be added to the base price, was again raised; is that correct?

A. It was.

Q. And, as I understand it, the Fleet representatives at that time had conferences attended by Mr. Smith and Mr. Geiss, who have been present throughout these hearings and who are still present, requests were made by the Fleet representatives upon the Bethlehem representatives for the estimates which had been used in preparing their original estimates submitted in connection with these contracts, in order to determine the exact base rates which had been used in connection with such estimates, in order in turn to determine this controverted issue as to the base rates applicable to these contracts; is that correct?

A. Yes, sir.

Q. In answer to those requests of the Fleet Corporation for the estimates which were actually used by Bethlehem in connection with its proposals for these ships in controversy, you were informed, as I understand it, in effect, that there were no such estimates; is that correct?

A. Yes, sir—except as to 465.

Q. Except as to 465, and that statement, in so far as you can remember, was made by Mr. Geiss, in Mr. Smith's presence?

A. Yes, sir.

Q. And there was no denial of that statement by Mr. Smith or any other representative of Bethlehem; is that correct?

A. No, there was not.

Q. And no such data or working papers were ever furnished to you in pursuance of those requests made by the Fleet representatives?

A. None that I know of.

Q. When I say to you, I mean to anyone in the Fleet Corporation, so far as you know?

A. No, sir.

BY THE MASTER:

Q. When you were sent to the Bethlehem to ascertain the amount representing the base for the item of labor in this estimate, as you have stated, were you simply given a roving commission by the representatives of the Fleet Corporation, or were you given any data that they had as a base to check against?

A. I was not sent to Bethlehem to determine the base rate. To explain my connection with reference to those base rates—

Q. What I want to know is, what were you trying to get? As a result of this audit, what was it you were trying to get, that you personally had supervision of?

A. You mean at Bethlehem?

Q. In relation to the contract ships, yes.

MR. ROBISON: I think the witness thinks you mean Bethlehem, Pennsylvania, alone.

THE MASTER: No, he understands what I mean.

THE WITNESS: No, I know what he means all right. In connection with the increased wage

problem we asked for the payrolls when we got to the plants and we got those payrolls. We asked for the Navy Yard scales; in one or two cases I believe they were furnished. We made comparisons between the Navy Yard payrolls and the Bethlehem—I mean the Navy Yard scales and the Bethlehem payrolls. But we also asked for the estimates to find out what rate Bethlehem used in arriving at these estimated prices in the contracts, because Bethlehem was contending that the base rate used was much lower than the base rate that the Fleet representatives contended was used, and therefore Bethlehem was asking for a much larger increased wage to be added to the estimated price than the Fleet Corporation representatives thought they were entitled to ask.

BY THE MASTER:

Q. Do you mean that the figure that you were trying to get was the base labor item, we will say, used in accordance with the terms of the contract to determine the increase, or the item used in the estimate that was furnished to the Shipping Board for the contract ships? They are two different things, are they not?

A. That is right.

Q. Which were you trying to get?

A. I was trying to get both.

Q. Both, all right—Now then, in trying to get the figure that was used as the estimate for the item of labor used in the proposal for the contracts, what did the Shipping Board people give you to check against, if anything? Let me put it this way: Did they give you the breakdown that was set forth in

the letter from Mr. Powell to the Emergency Fleet Corporation dated December 19, 1917?

A. I had the letter of December 19, 1917, and from that letter, as I recall—

MR. BROWN: Would you like to see the letter? There is no use guessing about it.

(Witness handed letter.)

THE WITNESS: There were two of them were very close there.

BY THE MASTER:

Q. What I have reference to appears on page 228 of the book you have in your hand.

A. I have had a copy of this letter a long time.

Q. Did you have it at the time you started to get this fact that you started after?

A. Yes, we had this letter.

Q. All right. You said you made a general audit, or a general audit was made under your supervision. Did your general audit include these items that entered into this estimate, other than the item of labor?

A. I did not make a general audit. I made an audit of Overhead of Administrative and General expense, and Depreciation. Later on I got into the Wage Increase audit, and to a small extent the Material matters, but I did not make a general audit.

Q. In your audit of Administrative, Selling and General, did you attempt to check this item in the letter of December 19 of $18.75 for 10,000-ton tank vessels?

A. No, I was not concerned with the cost per ton of Administrative and General expense at the time. I was concerned with the actual expenses that were incurred that we were required to pay as cost.

Q. So that your general audit did not go into the figures that were used in the breakdown for the estimate?

A. No.

Q. But it was directed to the actual cost; is that correct?

A. That is right.

Q. After the contracts were entered into? Your audit began after the contracts were entered into and the work started?

A. Oh, yes, much after that.

Q. I mean to say, it related to the figures that were on the books after the contracts were entered into?

A. Yes.

Q. And I suppose the same thing is true of the items of Material and Operating Expense that go with the item of Labor named, $187.50? You did not audit those items either, or attempt to find them on the books of Bethlehem?

A. You mean these particular figures that are set out in this letter?

Q. Yes.

A. No, I did not try to find those.

MR. BROWN: I do not know that the witness understands your question.

THE MASTER: I understood that the witness has said that he was trying to find the total that represented the item of Labor in this estimate; that he was trying to find two things, the Wage Schedule as applied to the Bethlehem plants as of January 3, 1918, and the item of Labor that entered into the estimate of December 19, 1917. I am trying to find out from him to what extent, with the books of Bethlehem

available to him, he directed his efforts to get the item of Labor that appears in this estimate on the figure of $187.50. Maybe I have not made it clear.

BY THE MASTER:

Q. You say you had that letter of December 19, 1917, with you?

A. I had the letter, yes. I had seen the letter.

Now in the letter of December 19, 1917, there appears an item in the 10,000-ton tank vessels of $187.50 per dead weight ton, in which is included Labor, Materials and Operating Expense that you used?

A. Yes, sir.

Q. What I was asking you was whether, in endeavoring to find what you said you were trying to find, and that is the base figure of Labor that entered into this estimate—whether you attempted to break that figure down by using the facts that were available to you at Bethlehem?

A. I did not attempt to break this down, because anything that was available to me in connection with the ships that were already built, I could not prove that $187—or rather, how it was made up.

Q. I am just asking, you did not try?

A. No, I could not.

BY MR. HALLETT:

Q. Was there anything in the books of Bethlehem that you saw that would have helped you in making any breakdown of that $187?

A. Absolutely nothing.

Q. Of the past ships, I mean, the cost of preceding ships?

A. The thing has gotten to be a little confused. I was not concerned with the cost of any ships that

were built prior to the contract ships, except one or two cost-plus requisition ships.

THE MASTER: I understand that.

THE WITNESS: Now from the figures that I examined, I could not make any attempt to break down a figure of $187.50. In fact, I did not make any such attempt.

BY THE MASTER:

Q. That is what I understood, you made no such attempt?

A. No, sir.

Q. What you did, as I understand it, so that I will get it clearly in mind, was to ask the Bethlehem representatives whether they had the details on which they based their estimate?

A. Yes, sir.

Q. And you say they told you they did not have such details?

A. Yes, sir.

Q. And you made no effort from their books to supply those details by attempting to reconstruct it yourself?

A. I did not.

Q. As I understand it, so that it will be perfectly clear, your request was not to the officers for the estimate of any one or another particular ship or class of ship but it was a request generally for their figures in details on which their various estimates were presented to the Shipping Board?

A. That is right.

Q. That they told you they did not have?

A. Yes, sir.

BY MR. EVANS:

Q. The payrolls were available to you, weren't they, for the plant at Fore River?

A. Yes.

Q. So that you could have taken those payrolls, we will say for the month of December, 1917, and you could yourself have determined what the wage rate was at Fore River in December of 1917?

A. I thought I explained that, that the payrolls were available, that in trying to develop a wage rate we used the payrolls; that they paid many rates other than were specifically set out in the Navy Yard scales. I had that available.

L. R. SANFORD, having been duly sworn, was examined and testified as follows:

BY MR. HALLETT:

Q. What is your address?

A. 836 Rittenhouse Street, Washington, D. C.

Q. You are employed by the Fleet Corporation at the present time?

A. I am.

Q. In what capacity?

A. Capacity of technical expert of the Bureau of Law.

Q. What has been your education and your experience?

A. I am a graduate of the University of Michigan, Department of Engineering and in Naval Architectural and Marine Engineering. Subsequent to graduation I became a draftsman in the Navy Yard at Washington, D. C. From there I went to Chicago and engaged in mechanical engineer work for a period of a year or two and from there I became

associated with the United States Engineer Corps at Rock Island, Illinois, in charge of the design and construction of floating plants, which includes all classes of vessels used by the Engineer Corps. I remained with them a period of some three years, I believe it was, and then came East and was for a short time employed in Boston in the office of Naval Architects there by the name of Swaze, Raymon & Page. I then went to Chicago and became Chief Engineer of the Improved Combustion Company, and I left them in the Fall of 1917 to go with the Emergency Fleet Corporation as resident inspector at Manitwok, Wisconsin.

Q. What do you mean by resident inspector?

A. Resident inspector for the two ships under construction at that place, under contract with the Emergency Fleet Corporation.

Q. How long did you remain at these plants?

A. Until the fall of 1920. I took one of the last ships out of Manitwok as an engineer on the ship and then proceeded to the home office of the Fleet Corporation at Philadelphia where I became an engineer in the Ships Claims Division and eventually was transferred to the changes and extras branch, later on became head of that branch, which was, in effect, the estimating department of the Fleet Corporation.

BY THE MASTER:

Q. When was that?

A. That was some time in 1922. Early in that year the construction division of the Fleet Corporation was removed from Philadelphia to Washington, and I, of course, went with them in that move. I remained with the construction division in various capacities, eventually taking charge of all

wood and steel ship construction activities, under the manager, until the abolition of the construction division in 1926, I think it was, at which time I was transferred to the Legal Division, as it was then called, to take care of technical matters in connection with litigation and also to clear up the tail ends of the construction program. I am still with the Legal Division, now called the Bureau of Law. I am also a member of several technical societies; including the society of Naval Architects and Marine Engineers and the American Society of Mechanical Engineers.

BY MR. HALLETT:

Q. Do you hold what is called a ticket on ships?

A. I do hold a Marine Engineer's ticket.

MR. HALLETT: I want to offer this physical exhibit G-173, the invoices for plates and shapes of Hulls 253 and 254, submitted by Bethlehem at the request of the Government.

(Admitted without objection as Exhibit G-173).

Q. Have you read the written explanation of the chart as given by Mr. Brown and represented by Exhibit G-154?

A. Yes, I have.

Q. Directing your particular attention to the part which relates to his method of arriving at the cost of a ship similar to Hull 253, have you made an examination of the information furnished to the Government by Bethlehem, including the invoices for plates and shapes of Hull 253?

A. I have.

Q. As a result of your examination did you find

that the cost of plates for 253 delivered base cost was the same as the delivered base cost of shapes?

A. No, it is not.

Q. What is the difference between plates and shapes? What are they?

A. Well a plate is a piece of flat rolled steel in connection with ship work used to enclose the skin of the ship on a frame work which is substantially built up out of shapes. That is about the best distinction I can make.

Q. Do the plates and shapes appear in Job 12 mainly?

A. Yes.

Q. Is there an appreciable amount of shapes used in Job 12 in the construction of a ship similar to Hull 253?

A. Yes.

Q. Was the purchase base cost delivered of shapes higher than that of plates or lower in the case of 253?

A. In the case of Hull 253 as reflected by the invoices the delivered price of shapes was considerably higher than that of plates.

Q. Did the invoices furnished by Bethlehem cover all of the plates and shapes that you saw as compared with the information furnished by Bethlehem of the total amount of plates and shapes purchased by them for Hulls 253 and 254?

A. No, they did not.

Q. Did Bethlehem furnish the information as to the average delivered cost of plates and shapes for Hulls 253 and 254?

A. Yes.

Q. Was the price of shapes also fixed by agree-

ment by War Industry Board in the Fall of 1917, as well as plates?

A. Yes, the price of both plates and shapes were fixed by the War Industry Board in the Fall of 1917.

Q. What was the price of plates?

A. The base price of plates at the mill was $3.25 a hundred.

Q. What was the price of shapes at the mill?

A. The corresponding price of shapes was $3.00 a hundred.

Q. What was the effect of Mr. Brown's assumption that plates should be used alone in determining his factor of increase for Job 12 as it affected the cost of plates and shapes in that job?

A. The effect of using plates alone for determining a factor of increase was to determine for shapes a factor much higher than the appropriate factor for these particular shapes.

Q. Is that because the shapes for 253 were purchased at a much higher price than for plates and the War Industry Board's price for shapes was much less than for plates?

A. It was because the price of plates for 253 was lower than that of shapes and the price of plates as fixed by the War Industry Board was higher than that of shapes.

Q. Have you made a calculation as to how much this excess amounted to resulting from the use of the factor 2.66 on the price of plates on Job 12?

A. I have.

Q. What is that amount?

A. The excess included in Job 12 by applying to plates and shapes in that job a factor 2.66 as compared with the proper factors which apply respec-

tively to plates and shapes in Job 12 is approximately $38,600.

Q. Now you say by applying the proper factors. What factors did you apply and how did you arrive at them in arriving at that sum of approximately $38,000?

MR. EVANS: Can we get that figure accurately?

THE WITNESS: I can give it to you in dollars and cents if you want it.

MR. EVANS: I would like to have it.

THE WITNESS: $38,623.21.

BY MR. HALLETT:

Q. (Previous question repeated.)

A. I applied to plates in Job 12 a factor 2.604 and to shapes in Job 12 a factor of 1.80. The application of those factors to the respective amounts in Job 12 which apply to plates and shapes as compared with the application of a 2.66 factor to the same amounts, give the figure that I have given.

Q. How did you arrive at those two factors?

A. In this way. I took the total amount of steel in Job 12 as furnished to us by Bethlehem, I mean by total amount the total weight at the average price also furnished by Bethlehem for that weight of steel, which gives me the total amount paid for that steel. I then took a proportion of the total amount as applied to plates and shapes, in accordance with information furnished by Bethlehem to the effect that of the total of the plates and shapes 71 per cent. approximately, would constitute plates and 29 per cent., approximately, would constitute shapes. In that way I determined of that total weight what was plates and how much was shapes.

I then took the total delivered price of plates as reflected by the invoices, which, according to my calculation, was 1.3818, and applied that to the total weight of plates already determined as I have explained, and that gave me the cost of plates included in Job 12. Deducting that from the total cost of plates and shapes included in Job 12 I obtained the corresponding cost of shapes. I then divided the cost of shapes by the total weight of shapes to get the unit price of the shapes. I then had the unit price as far as 253 was concerned of shapes and of plates and I had to determine then the corresponding current price of plates and shapes based on the War Industry Board prices. To do that I took the base price as fixed by the War Industry Board of $3.25 for plates and $3 for shapes, added to that the freight from Pittsburgh to Fore River, and added also to that—

BY MR. WOOD:

Q. What is it you are reading from, some memoranda you have already written of your testimony there?

A. I haven't written my testimony but I have written the figures out.

Q. I noticed you turned over page after page.

A. You will appreciate that I cannot carry all these figures in my head.

BY MR. EVANS:

Q. You are giving us your figures not from recollection but from data that you prepared at some time?

A. Yes.

Q. So that your figures are accurate now?

A. I take it they are, yes.

BY MR. HALLETT:

Q. Will you continue with your answer?

A. As I was stating when I was interrupted I then added to that an allowance of 10 cents for increased rate handling and so forth that was made by Mr. Brown in his calculation, and, in addition, added the average extras per pound each for plates and shapes as determined from the invoices furnished to the Government by Bethlehem for these two hulls. That gave me a total current delivered price at Fore River for plates and for shapes. In the case of plates the price was 3.5978 and in the case of shapes it was 3.3325. The ratio of these delivered prices obtained as I have explained with the average delivered prices for 253 and 254 also obtained as I have explained, gives me the factor of increase respectively for plates and for shapes and those two factors, as I have stated, were, for plates 2.604 and for shapes 1.80.

Q. Did you make an allowance for extras in arriving at that factor?

A. I did.

Q. From your examination of the invoices what was the base price for plates delivered to the plant at Fore River for Hull 253?

A. As I recall it the base price of plates delivered at the plant of Fore River for Hull 253, as shown by the invoices, was $1.364, that is per hundred pounds.

BY MR. EVANS:

Q. Are you now drawing on your unaided recollection or have you got a memorandum of that?

A. I am now telling you what my memory gives me.

Q. But you haven't got that figure down on your memorandum?

A. You may look at it and see.

Q. I am asking you?

A. No, I have not.

BY MR. HALLETT:

Q. Now, with respect to the other material in Job 12, other than plates and shapes, what is the general character of that material?

A. According to information furnished by Bethlehem, the general character of material in Job 12, other than plates and shapes consists of bars, rivets, certain castings, certain forgings and some other miscellaneous material not specified.

Q. Was it a fact that material other than plates and shapes increased in price over the period covering from the start of the construction period of Hulls 253 and 254 down to November, 1917, as rapidly as plates and shapes?

MR. EVANS: I was wondering whether Mr. Sanford is really qualified to answer that question. I haven't heard that he has had any experience with prices of materials.

THE MASTER: You better qualify Mr. Sanford to answer that question.

MR. HALLETT: I will withdraw the question.

BY MR. HALLETT:

Q. Is there any particular difference with respect to the other material than plates and shapes in Job 12 than in connection with the material outside of Job 12?

MR. EVANS: Objected to. Let him tell us what the materials in Job 12 other than plates and shapes consist of and what the materials other than that in Job 12 consist of and then it

will be for the Master to determine whether they are substantially the same types of material.

MR. HALLETT: I think I have already shown what material other than plates and shapes was in Job 12.

MR. EVANS: All right, then let him tell us what the other material was and it will be for the Master to say whether they are similar.

THE MASTER: The objection I think is of sufficient merit to call for that qualification.

BY MR. HALLETT:

Q. What is the character of materials outside of Job 12 that goes into Hulls similar to hull 253 and 254?

A. It consists of a large quantity of miscellaneous materials and various characters of material. In fact all the other materials that go into the make up of a ship.

Q. Can you enumerate what they are?

A. I can enumerate some of the major items. It would take all day and possibly longer to enumerate them all.

Q. Will you give us the principal items that go into the ship outside of Job 12?

A. For instance, one of the large items is machinery of all kinds, including engines, boilers, pumps and various auxiliaries, all of the rigging, all of the life saving equipment, all the deck fittings, all of the joiner work, all of the carpenter work, all of the plumbing, all of the piping, in fact all of the thousand miscellaneous items that go to make up a ship with the exception of those in Job 12.

Q. The plates and shapes to a certain extent may be included in it?

A. To a small extent, yes.

Q. And there are steel forgings and castings that go in jobs outside of Job 12 you say?

A. Certain ones.

Q. And were many of the items which go into Job 12, outside of Job 12, the subject of regular quotations in trade journals?

A. Yes.

MR. EVANS: When?

MR. HALLETT: That question is withdrawn.

BY MR. HALLETT:

Q. In your opinion is there any reason for applying a higher factor to the materials outside of Job 12 other than plates and shapes—I mean than to materials outside of plates and shapes in Job 12 than to the material outside of Job 12.

MR. EVANS: Objected to on the ground that so far at least this witness has not qualified himself to answer the question.

(Objection sustained.)

BY MR. HALLETT:

Q. Have you made a calculation using Mr. Brown's factor of 1.75 which he applied to material outside of Job 12, to the material in Job 12 other than plates and shapes, instead of Mr. Brown's factor of 2.66?

A. Yes.

Q. What is the calculation?

MR. EVANS: Objected to. What possible relevance can that have?

MR. HALLETT: I think that can have a great deal of relevance.

THE MASTER: What is the purpose of it, because your witness has said that he has adopted a totally different factor in making his calculations on the plates and shapes in Job 12.

MR. HALLETT: All he has done is to take and apply the actual figures on plates and shapes and has made a distinction between plates and shapes to which the data which was available to Bethlehem and to Mr. Brown applies and then taken Mr. Brown's own factors for the materials outside of Job 12 of plates and shapes to show what that is.

THE MASTER: It is a mathematical calculation, if Mr. Hallett wants to use it in a convenient way and this witness has done it, that I would rather we take than argue about it.

MR. EVANS: My point is this, that if he is going to give us a figure based on a figure he says is proper and not to affect Brown but so he could justify the factor he used—now he has justified the factor he placed on plates and shapes. Now he proposes, instead of using Brown's factor of 2.66 on materials in Job 12 other than plates and shapes, he is going to use another, and if he does I say it is meaningless until he first justifies the factor he proposes to use.

THE MASTER: Up to the present moment its relevancy does not appear. Mr. Hallett says he has a purpose in using a mathematical cal-

culation and it is only a question of whether we do it ourselves or let the witness do it.

MR. EVANS: No objection then if he asks the witness the result he would arrive at.

MR. HALLETT: That is all I did ask.

BY MR. HALLETT:

Q. What is the calculation?

A. I will refer, if I may, to my calculations.

MR. EVANS: Why, of course, I want you to be accurate as far as you can.

THE WITNESS: The material in Job 12, Hull 253, other than plates and shapes, amounts to $39,459.52. The application of a factor 2.66 to that figure gives $104,962.32. The application of the factor 1.75 to the same figure gives $69,154.16.

BY MR. HALLETT:

Q. And the difference is?

A. And the difference between those two total figures is $35,808.16.

Q. Was the price of rivets quoted in publications from 1915 down to approximately the time of the War Industry Board fixation?

A. Yes.

Q. Was the price of rivets fixed by the agreement of the War Industries Board?

A. Yes.

Q. Have you compared the price of rivets at the time when the shapes were purchased for Hulls 253 and 4 as shown in these publications with the price as fixed by the War Industry Board?

A. I have compared the price of rivets, that is the quoted price of rivets, at the time the quoted

price of shapes is $1.80, with the War Industry Board's price for rivet.

Q. What was the War Industry Board's price?

A. The War Industry Board's base price was $4.40.

Q. And what is the factor of increase with respect to rivets to be applied?

MR. WOOD: We haven't yet had what the price was at the earlier period or what the source of his information was or what he knows about it.

THE WITNESS: I said that I took the price of rivets at the time that shapes were quoted at $1.80.

BY MR. WOOD:

Q. That was the price of shapes, not rivets?

A. The $1.80 referred to the price of shapes.

BY MR. HALLETT:

Q. And what was the price of rivets at that time?

A. $2.46 base.

BY MR. WOOD:

Q. And what was that date, please?

A. I cannot tell you offhand the date because I haven't a memorandum of it here, but it was at the date at which $1.80 was quoted for shapes, and would be approximately, I should say, about December, 1916.

BY MR. HALLETT:

Q. Have you a copy of the list with you?

A. I have it in my brief case. I haven't it here.

Q. Will you get it?

A. The price of shapes was quoted—the nearest price that I could get was December, 1915, at which time the price on shapes was quoted at $1.78, or

very nearly the $1.80 price that I had reference to, and the price that I took for rivets was also the price quoted in December, 1915, namely $2.46.

Q. When was the keel laid on these ships?

A. I can't tell you exactly from memory but if my memory serves me right it was approximately 5 months after that time.

Q. Does that appear in the information that was furnished to you?

A. I believe it does.

MR. WOOD: I object to testimony of the witness as to what the price of rivets was in December, 1915, no foundation of any description having been laid for the fact that it was at that time or approximately at that time that the rivets that went into 253 were purchased, the witness having stated himself that the keel of the ships was not laid until five or six months later.

BY MR. HALLETT:

Q. Have you the price of rivets at the time the keel of these ships was laid?

A. If I can determine accurately the date the keel was laid I can tell you the equivalent price of rivets, yes.

Q. Assuming that the keel was laid, as given in the information furnished us by Bethlehem, and assuming that is accurate, take the date of May 18th, 1916, referring to Exhibit G-6?

A. In May, 1916, the quoted price of rivets was $3.875.

Q. So that rivets had gone up from the date you used to the time at which the keel was laid on these ships is that right?

A. Yes, very materially.

Q. And what would be the effect of that increase in the factor which would be derived from using the War Industry Board's price?

A. It would very materially decrease the factor.

Q. And what was the factor using the figures that you used?

A. The factor using the figures that I used was 1.77.

Q. And if you used the time which was suggested to you by Mr. Wood of the actual laying of the keel, that factor would be affected how?

A. Very much less than that.

Q. Now did you make the same kind of a calculation from the same data with respect to the price of bars?

A. I did.

Q. And what is the factor that you arrived at with respect to the increase of bars on the same dates that you have used on rivets?

A. 1.57.

BY THE MASTER:

Q. Could you give us the date when the War Industries Board fixed the prices you have referred to?

A. I can't tell you offhand but it was in the Fall of 1917.

Q. Prior to November 1, 1917, was it?

A. I wouldn't even care to say that without verifying the facts.

THE MASTER: I would like to have that fact of record.

BY MR. HALLETT:

Q. Directing your attention to the statement in

Mr. Brown's explanation with respect to the method applied to Hulls 158 and 159, as I understand it, he based his explanation upon the fact that because the cost per light weight ton of labor and materials of Hulls 253 and 158 were approximately the same, and they were built in approximately the same period, it was proper to apply the same factors. Have you been furnished with the light weight tonnage of both 253 and 158 and 159 by Bethlehem?

A. Yes, sir.

Q. Was the total cost per light weight ton of the two ships for material and labor the same?

A. No.

Q. Can you remember what the individual cost of both labor and material for each ship was?

MR. EVANS: Are you now giving us something from your unaided recollection or have you a memorandum to support the figures you are going to give us?

THE WITNESS: I have the actual figures if you want me to use them.

MR. EVANS: Let us have the accurate figures rather than from memory.

THE WITNESS: The total cost of material and labor per light weight ton for Hull 253 was $89.90, and for material and labor of 158 was $95.80.

BY MR. HALLETT:

Q. So that the larger ship built in Sparrows Point plant cost approximately $5. to $6. a per light weight ton more than the smaller ship at Fore River?

A. On the basis of these figures, yes.

Q. And these are based on the figures furnished to you by Bethlehem as to the light weight tonnage of the two ships and the figures used by Mr. Brown in his explanation?

A. Yes.

Q. Now if two ships were built in the same yard under the same accounting conditions, the same labor conditions, and the material purchased at the same rate, what would you expect the cost per light weight ton of the smaller ship to be as compared to the cost per light weight ton of the large ship?

A. I would expect cost per light weight ton of the smaller ship under those conditions to be greater than that of the larger ship.

Q. Why is that?

A. That is because, with respect to both labor and material the fact that items are purchased in larger units, heavier weights involved and so on and so forth, makes the unit price on a weight basis less for the larger ships where the larger and heavier items are involved.

Q. Were the individual costs per light weight ton of material and labor of the two ships the same?

A. No.

Q. What were the relative costs of material in the two ships per light weight ton?

A. The cost of material per light weight ton for Hull 253—just a moment. Did you ask me for the total cost of labor and materials?

MR. HALLETT: Yes.

THE WITNESS: Well, I informed you wrong, because I have given you the cost of material alone instead of the cost of material and labor. All of the figures that I have just given

you apply to material alone. I read the wrong figures.

Q. Now what was the total labor and material cost per light weight ton on the two ships?

A. For Hull 253 it was $165. per light weight ton and for Hull 158, it was $168.50, both approximate.

Q. Now what was the cost per light weight ton of labor of the two ships?

A. For labor the cost per light weight ton for Hull 253 was $75.20 and for Hull 158 it was $72.60, approximately.

Q. As the result of that figure that you have now given, it is shown that the cost for material of the larger ship was considerably in excess of the cost of material in the smaller ships, speaking in light weight ton terms, is that it?

A. On the basis of cost per light weight ton that is so.

Q. Have you examined the information furnished by Bethlehem with respect to the cost of plates and shapes that entered into Hull 158 and 159?

A. I have.

Q. Was the delivered cost of plates and shapes for 158 and 159 the average cost I am speaking of, approximately the same, or was it higher than the average cost of plates and shapes purchased for 253?

A. It was considerably higher on 158 and 9 than it was for 253.

Q. As I understand it, when the prices for plates and shapes were fixed in the Fall of 1917, it was fixed for all plants along the coast, was it not?

A. Well the price was fixed as a base price at Pittsburgh.

Q. So that there would be no difference in the price for plates and shapes for Hull 158 and 159 had been purchased at a higher rate, there would be no basis for an assumption that the War Industries Board prices for the same plates and shapes in Sparrows Point would be increased correspondingly above those at Fore River?

A. No, the War Industries Board prices would remain the same. The only difference in the delivered price would be due to the influence of freight.

Q. Was the freight larger or smaller from Pittsburgh to Fore River than Sparrows Point?

A. The freight from Pittsburgh to Fore River was greater than the freight from Pittsburgh to Sparrows Point.

Q. Bethlehem did not furnish us invoices of the plates and shapes that went into Hulls 158 and 9, did they?

A. Not so far as I know.

Q. The only thing that you saw was the total cost of plates and shapes at an average price of purchase?

A. Yes, and the weight.

Q. Was it possible for you to take that average price and arrive at an average price of plates and shapes delivered under the War Industries Board prices at Sparrows Point?

A. Yes.

Q. And determine a factor that should be applied to the cost of plates and shapes at Sparrows Point for a hull similar to 158 and 159?

A. Yes.

Q. And did you do that?

A. I did.

Q. And what was the result of your calculation and how does it compare with Mr. Brown's calculation using his factor of 2.66?

A. The difference between the result obtained by applying to the total of Job 12 as used by Mr. Brown, namely $267,000., the factor of 2.66, as compared with the factor determined by me of 1.895, is $204,255.

Q. Now, with respect to the cost of materials other than Job 12, if you make an investigation and find plates and shapes had been purchased at a higher price and therefore presumably a later date than the Hulls at Fore River, would you feel justified in using the same factors for materials other than plates and shapes or other than Job 12, as you applied in Fore River?

A. If those were the conditions it would to me call for an investigation as to the propriety of using the same factor for other material as had been used in the case of Hull 253.

Q. Have you made any calculation as to what would be the result if you used 1.75 on materials others than plates and shapes in Job 12 instead of 2.66?

A. Yes, I have.

Q. What is that?

A. The application of the factor 2.66 to material other than plates and shapes in Job 12 on Hull 158, result in a figure of $144,500., and the application of the factor 1.75 to the same figure results in a total of $95,000., a difference between the two of $49,500. Now, I would like to explain that part of this $49,500 is already included in the figure of $204,000. because those factors there were applied to the total of Job 12 and not to plates and shapes

alone and therefore I don't want anybody to get the idea that the $49,000. should be added directly to the $204,000. to get the total difference.

Q. Can you give the total amount of excess in the calculation of the factor 2.66 on Job 12 over the application of the factors used by you for plates and shapes and the factor of 1.75 for materials other than Job 12?

A. Yes.

Q. What is that?

A. $212,128.50.

Q. Were you given an opportunity of comparing the plans and specifications of certain of the vessels indicated in the schedule shown in Exhibit G-6?

A. Yes, sir, I was.

Q. Did you examine the plans and specifications of Hulls 253 and 254 and compare them with the plans and specifications of the contract ships built under contract 183 to determine their similarity?

A. I did.

Q. Were they exactly similar or are there differences?

A. There are differences.

Q. What are the differences?

A. There are a number of them. I will refer to my records. The vessels constructed under contract 183 at Fore River were different from Hulls 253 and 254 substantially in these respects: they had six less summer tanks with hatches, with corresponding decreased piping. They had one less pump room. They had two large cargo pumps as against 12 small pumps for 253 and 254, with the corresponding decreased piping. They had smaller condensers. They had a single circulating pump

engine instead of duplicate engines. They had steel exhaust pipes instead of copper, except for the main exhaust. They had smaller donkey boilers and the donkey boiler was coal burning instead of oil burning. Three boilers were fitted abreast instead of one forward of the two as in 253. The bulkhead arrangement was different on account of the different boiler arrangement. In addition to that the contract hulls were constructed with channel framing instead of bulb angle framing as in Hull 253.

Q. Did you find that the ships built under contract 183 were substantially the same as 268 and 9 built and requisitioned?

A. Yes, they were substantially the same ships.

Q. And were the ships built under contract 183 the more expensive or a less expensive ship to build than Hull 253?

A. Comparatively they were a less expensive ship to build.

Q. And a substantially less expensive?

A. I should say so, yes.

(Recess from 1 o'clock to 2 o'clock P. M.)

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2 p. m.

L. R. SANFORD, direct examination resumed.

BY MR. HALLETT:

Q. As I understand it, just previous to the recess you had said that you had examined the plans and specifications on several of the hulls included in the schedule known as Government Exhibit G-6?

A. I did.

Q. And compared those with the plans and specifications of hulls covered by different contracts which were were ultimately made with Bethlehem and the subject of this suit?

A. That is right.

Q. Before I go into that, did you examine the plans and specifications of Hulls 158 and 159, the Sparrows Point hulls used by Mr. Brown in his explanation, to see whether or not the hotel equipment and navigating equipment was part of the specifications to be delivered by the shipbuilder to the purchasers?

A. I was.

Q. Was navigating equipment and hotel equipment part of the specifications of those vessels?

A. It was included in the specifications.

Q. Did you compare the specifications and plans of hulls 150, 151, 153 and 170, being the ships constructed under Contract 191 with Bethlehem, with the plans and specifications of ships on G-6 constructed at Union plant?

A. With certain ships shown on Exhibit G-6.

Q. And what were those ships?

A. They were hulls 132, 133, 136, 137, 138, 139 and 142.

Q. Did you find that the hulls constructed by Bethlehem under Contract 191 were substantially similar to the other hulls previously constructed by Bethlehem at Union, which you have just enumerated?

A. Substantially so, with the exception of hull 170 of Contract 191.

Q. Was hull 170 a different type of ship?

A. Somewhat different, yes.

Q. In what respect did hull 170 vary or differ from the previous ships?

A. It was a longer ship, a shallower ship, and had one less deck. Those are the main differences.

Q. In your opinion, was hull 170 a cheaper or a more expensive ship to build than the previous ships constructed by Bethlehem?

A. I should say it was substantially the same—referring to the other ships which I have enumerated.

Q. What were the differences, if any, which existed between the other ships covered by Contract 191 and those previous ships?

A. About the only substantial differences were in respect to machinery. In the seven so-called basic ships, my recollection is that five of them were reciprocating engine jobs and two of them were turbine jobs, and part of the ships under Contract 191 were reciprocating engine and part were turbine. Naturally, if you are comparing two ships you should probably compare engine job with engine job and turbine job with turbine job.

Q. Is it possible to evaluate the differences that may be occasioned by the fact that one ship is a turbine job and the other ship has a reciprocating engine?

A. It would be possible to do so approximately, yes.

Q. Is there any ultimate difference in the cost of two ships of a similar type, one having reciprocating engines and the other turbine engines? Is the total difference in cost a material item?

A. Not very material, no.

Q. With respect to the situation confronting Bethlehem, would there have to be any adjustments

of the estimates of labor and material occasioned by the difference between turbines and reciprocating engines?

A. I should say that if you were going to use these so-called basic ships as a basis for an estimate, if you were going to estimate on a turbine job you should adjust them to a turbine basis, and, vice versa, if you were going to estimate on a reciprocating job, you should adjust them to a reciprocating basis.

Q. What effect would the adjustment have with respect to labor and material under the Bethlehem situation?

A. If I am correct in my assumption that Bethlehem at that time built its own reciprocating engines and bought its turbines, the effect of that situation would be to somewhat increase the labor item in the case of a reciprocating engine job over a turbine job, and likewise to somewhat decrease the material item.

Q. From the information which was furnished to the Government by Bethlehem, was it possible for you to determine what was the approximate base rate of labor, the average base rate of labor, under which those base ships were constructed, or, if I can use the term, the effective construction date of those vessels?

MR. EVANS: What ships are you referring to?

MR. HALLETT: I am now referring to the ships which he used for comparative purposes, being hulls 132, 133, 136 to 139 inclusive, and 142.

A. Bethlehem furnished us with a statement of

the plant earning rate and the labor expended by months on these various ships, and also advised that the plant earning rate could be adjusted to the direct labor earning rate by deducting approximately three per cent., and by so doing and dividing that adjusted rate into the monthly labor item, it was possible to determine the number of man hours per month, and also, naturally, the total number of man hours; and dividing the total number of man hours into the total labor cost, you determine an average labor earning rate.

Q. And that average labor earning rate, so determined for those ships, is approximately analogous to the average rate which Mr. Brown used in 253? I do not mean the same figure, but it means the same thing, does it not?

A. I should judge that it did, yes.

Q. What was the date of the effective construction of these base ships that we have been talking about at Union?

MR. EVANS: I doubt if that means anything to anyone.

THE MASTER: Let us put on the record here a definition of what you mean by base ships.

MR. HALLETT: The base ships we are referring to are the base ships which were constructed at Union Plant prior to January 1, 1918, and which were analogous or similar to the contract ships covered by Contract 191.

THE MASTER: And are the ships referred to as constructed at Union Plant in Exhibit G-6?

MR. HALLETT: Yes, sir. With respect to what the effective construction date of those ships is, by an examination of Exhibit G-6—

MR. EVANS: Why do you not state on the record what you mean by it?

MR. HALLETT: That is what I want to do, but I wanted to say that on G-6 there is a column there at the Union Plant consisting of 132, 133 and several other ships which were constructed as you notice, that is, the keels were laid at different dates, and the completion or delivery dates. What the effective construction date means is an attempt to determine the rate that existed at the average period during which those ships were being constructed. In other words, take hull 253. That ran over an extended period of time and the rate varied, but the average construction rate of that—I have forgotten the figures, but take for example .35 or .3875, and this was an attempt to give the result with respect to the various similar base ships.

BY MR. HALLETT:

Q. What was the effective construction date of the seven or more base ships constructed at Union which you used for comparison with Contract 191?

MR. EVANS: I would like to know whether you are going to give us the effective construction date of each vessel, or the average construction date of the whole group.

THE MASTER: He has asked for the average.

MR. HALLETT: Of the whole group.

THE MASTER: If the question is answered, it would be the average.

A. The effective construction date of hulls 132, 133, 136, 137, 138, 139 and 142 at the Union plant was March or April, 1917. By that I mean the date at which, if all the labor expended on those jobs could have been concentrated at the rate effective as of that date, that would produce the total labor expended on those ships.

BY MR. HALLETT:

Q. From the information received from Bethlehem, were most of those ships carried as one job, do you remember?

A. My recollection is that they were, although I am not very clear on that. The exhibit should show.

Q. With respect to the ships covered by Contracts 230 and 301, which were contracts covering vessels to be constructed at the Union plant, did you make a study of the plans and specifications of those ships?

A. I did.

Q. And compare them with the plans and specifications of the same base ships we have been referring to?

A. I did.

Q. And what did you find as a result of that examination?

A. The vessels of those two contracts are substantially similar to hull 170 of Contract 191, and, that being so, as far as cost is concerned substantially comparable with the seven base ships that we have referred to. About the only difference that exists, if I remember correctly, is that those were

engine jobs and some adjustment should be made on that account, as I previously explained.

Q. With respect to the ships covered by Contract 177, the 10,100-ton tankers constructed at the Union plant, have you compared the plans and specifications of those ships with any of the ships on schedules referred to in G-6?

A. I have.

Q. With what ships did you compare those?

A. With hulls 130, 140 and 141.

Q. What does your comparison of the two sets of plans and specifications disclose?

A. It discloses that there were a few differences between the ships of Contract 177 and the three hulls 130, 140 and 141—not very substantial differences.

Q. Can you tell what those were?

A. Yes.

Q. What were they?

A. The vessels of Contract 177 were fitted with two less summer tanks and hatches than the three base ships, and with corresponding decreased piping on that account. They were not fitted with super heaters, and they were fitted with reciprocating engines as compared with turbines on the three earlier ships.

Q. All other things being equal, would the costs of labor and materials on the ships covered by Contract 177 be more or less than the cost of material and labor in the base ships used by you?

A. In the matter of total cost there would not be much difference.

Q. What was the effective construction date of the hulls 130, 140 and 141, which were tankers previously built in the Union plant?

A. It happens to be the same as for the cargo vessels, March or April, 1917.

Q. With respect to the 10,100-ton tankers covered by Contracts 301, 179, 226 and 300, whether or not they are the same kind of tankers covered by Contract 177?

A. Yes, they are substantially the same.

Q. And what you have said with respect to a comparison of the plans and specifications of the ships covered by Contract 177 and your base ships, would apply also to the ships covered by Contracts 301, 179, 226 and 300?

A. That is correct. If I may correct you slightly, I believe there were other types of ships under 301. I am referring, of course, only to the tankers under that particular contract.

Q. You are referring to the tankers covered by 301. Were the ships covered by Contract 299, being 9100-ton tankers built at Fore River, practically duplicates of the ships covered by Contract 183?

A. Yes.

Q. Were the 7500-ton tankers built under Contracts 178 and 314 practically similar ships?

A. Yes.

Q. Have you compared the plans and specifications for those ships with the plans and specifications of any base ship?

A. Yes.

Q. What ship?

A. Hull 440 at Harlan.

Q. What did you find as a result of your comparison?

A. I found that the vessels under these contracts were substantially duplicates of hull 440 at Harlan.

Q. What was the effective date, construction date, of hull 440?

A. The effective construction date of hull 440 at the Harlan plant was March, 1916.

Q. Were the 7400-ton cargo ships covered by Contracts 178, 196 and 226 similar, or practically similar?

A. Yes.

Q. Did you compare the plans and specifications for those ships with the plans and specifications of any other ship previously constructed by Bethlehem?

A. I did.

Q. And what ship?

A. Hull 167 at Sparrows Point.

Q. And what did your comparison show?

A. Showed several differences between hull 167 and the contract vessels.

Q. What were the differences and what was the approximate effect upon the cost?

A. The major differences were as follows: on the contract vessels an extra bulkhead was fitted, forming a deep tank, and the double bottom tanks were fitted for fuel oil. The contract vessels were fitted with larger engines, larger condensers, and instead of two boilers, three smaller boilers were fitted. Those are the main items of difference.

Q. What was the effect of that with respect to comparative costs?

A. The effect of that with respect to comparative costs would be that the contract vessels were somewhat more expensive than the hull 167, with which they have been compared.

Q. What was the effective constructive date of hull 167?

A. September or October, 1917.

Cross Examination.

BY MR. EVANS:

Q. Mr. Sanford, I thought before I understood what you meant by the phrase "effective construction date," but I do not believe I do. Will you explain it to me again?

A. Yes. The effective construction date, as I term it, is that date at which, if all the labor expended on any ship or group of ships were reimbursed at the average rate in existence or actually being paid at that date, it would produce the total amount of labor expended on the ships. In other words, it is a so-called center of gravity of the labor, if I might put it that way.

Q. Let me put it in my language, to see if I understand it. You mean by that, do you, that if you take the average earning rate on direct labor for the month that you say is the effective construction date of the vessel, that will give you the average earning rate on that particular vessel?

A. That is correct.

Q. Now you have not determined the effective construction date, as you call it, on these cargo vessels on the West Coast for each vessel, but only as a group?

A. I cannot tell you offhand, Mr. Evans. I may have determined it for each vessel in arriving at the group date. I would have to refer back to my calculations to tell.

Q. The testimony you have given us is an average date for the entire group?

A. An average date for the entire group, that is correct.

Q. Can you give us the effective construction date hull by hull? Have you that with you?

A. No, I do not believe I can, for this reason—

Q. If you cannot, I do not care about the reason.

A. Because a number of those hulls were grouped together. The labor was not kept separately, as I recall it.

Q. You haven't got it with you, anyhow?

A. No, or at least I would have to dig a lot to find it.

Q. You said to-day that the average construction date on those Union cargo ships was March or April. Was it not rather February or March?

A. I do not think so, although, as a matter of fact, it does not make much difference, because for a period of one month the rate varies very little.

Q. I am not sure that that is the fact, Mr. Sanford, and therefore, in case it may not be a fact, we would like to get that date, for what it is worth, as accurately as we can. You testified before Mr. Roberts substantially as you have testified here, did you not? I mean you covered the same general ground?

A. Yes, so far as I know.

Q. Referring to your testimony before Mr. Roberts at page 357 you were asked what the effective construction date of the base ships was, and that question referred to the West Coast cargo vessels?

A. Yes.

Q. Your answer was, "As I recall it, the effective construction date, so termed, of those seven

vessels, was approximately March or April, 1917, or possibly February or March. I do not remember the exact date. Then later on in your testimony, perhaps after you had consulted some records, I do not know, you seem to have been more positive about that. On page 367 you were asked about the average construction of hulls 130, 140 and 141—and they were West Coast tankers, were they not?

A. Yes.

Q. And your answer was, "The average effective construction date of those three vessels was approximately March, 1917. May I at this time verify my recollection on the cargo vessels?" Mr. Brown, who was examining you, said "I wish you would," and your answer was, "I was purely speaking from recollection. February or March, 1917, I think that is about what I said before." Now the difference may be immaterial, or it may be very material, I do not know. Have I correctly quoted your testimony?

A. I believe you have, yes.

Q. And then Mr. Brown went on: "Q. In other words, the average effective construction date of the seven Union hulls previously referred to by you was February or March, 1917, and not March or April, 1917?" and your answer was "That is right"?

A. I believe so, yes.

Q. Do you wish to correct the testimony that you have given to-day accordingly?

A. If the fact is at all material I would prefer to go to my computation in which I got that and tell you exactly what the situation is.

Q. Mr. Sanford, instead of doing that, do you not recall that that is precisely what you did at the last hearing, and after having done that you cor-

rected the testimony you had previously given and you made the effective construction date on those cargo vessels February or March, and not March or April?

A. Yes.

Q. I am asking you now whether we may accept that as the correct date for the purposes of this hearing, or whether you would like to verify it again?

A. If it is material, I would prefer to verify it again. I think it is entirely immaterial.

Q. Have you anything before you from which you can verify it?

A. I have something here, yes.

Q. How long would it take you to verify it?

A. About a minute.

Q. Then let us have it accurately.

A. —I am ready.

Q. Will you tell us now?

A. Yes. According to my calculations, the average rate for those seven hulls was .3918. The average rate paid in February was .3895, in March was .3895 and in April was .3981. You see, it is somewhere between March and April. It is this period here (indicating) in which the jump occurs which covers that rate.

Q. In other words, your average earning rate on those ships is closer to the plant earning rate in February and March than it is to the plant earning rate in April?

A. That is correct, yes, sir—not the plant earning rate, the direct earning rate.

Q. The direct earning labor rate, quite right. Now apparently you can, from the figures you have

just gotten out of your files, give us the effective construction date hull by hull, can you not?

A. No, not hull by hull. I can give you the average for 132, 133, 136, 137, 138 and 139, because they were carried as a single group, and 142 was carried separately. I can give it to you for 142 and that other group, if you like.

Q. Suppose you do that.

A. For hull 142 the effective construction date I should say was June, 1917. The effective construction date for the group of six hulls comprised of 132, 133, 136, 137, 138 and 139 was between March and April, 1917.

Q. Will you tell us what experience you had had prior to January 1, 1918, in the construction of tankers or cargo vessels designed for trans-Atlantic service?

A. I had had no experience prior to January 1, 1918, in the construction of tankers for trans-Atlantic service.

MR. WOOD: How about cargo boats?

BY MR. EVANS:

Q. How about cargo boats?

A. I am answering this in my own way, Mr. Wood. With respect to cargo vessels intended for trans-Atlantic service, prior to January 1, 1918, my only experience in the actual construction of such vessels dated from October, 1917.

Q. And what was that experience?

A. As resident inspector for the Emergency Fleet Corporation.

Q. Where?

A. At Manitowoc, Wisconsin.

Q. And what kind of ships were built there?

A. Cargo vessels.

Q. What type?

A. Three-island.

Q. What size?

A. Varying between 3500 and 4200 tons.

Q. 4200 tons was the largest?

A. Yes.

Q. Steel ships?

A. Yes.

Q. You said that at one time you were hull inspector and later engineer with the United States Army Engineers on the Upper Mississippi River?

A. That is correct.

Q. What kind of work were you doing there?

A. I was in charge of the design and construction of all types of vessels constructed and built by the Engineer Corps of the Army in that district, and in some other districts.

Q. That does not tell me very much. What type of vessels were built?

A. The type of vessels built were steel river boats, steamboats, various types of derricks, hydraulic dredges, dipper dredges, barges and miscellaneous other craft of that general description.

Q. They were all river boats?

A. Yes.

Q. What steamboats were built under your direction while you were there?

A. A number of stern wheel towboats were built specifically under my direction.

Q. I am not sure that I know what a towboat is. I suppose it is a boat that tows in some way or other?

A. Exactly.

Q. Is that as far as you can go?

A. I can explain the difference between a towboat and a tug, if you like. A towboat, as used in the river, is a vessel that pushes and does not pull as a tug does, and very considerably larger than a tug.

Q. How large were those towboats?

A. As I recall it, approximately 150 feet long.

Q. They were not cargo-carrying boats?

A. Oh, no.

Q. And none of the boats with which you had any experience at that time were cargo-carrying boats?

A. That is quite true.

Q. When you went to Manitowoc, you did then for the first time have some connection with the construction of cargo vessels?

A. With the actual construction, yes.

Q. With the actual construction of cargo vessels up to, I think, an upper limit of 4200 tons, you told us?

A. That is correct.

Q. Did you have anything to do with the preparation of estimates on any of those boats?

A. You mean as to the original cost of the boats?

Q. Yes.

A. No. I did as to the changes made in them.

Q. As to changes; when?

A. During the course of construction and subsequently.

Q. When did you first commence that work?

A. I cannot tell you when I first commenced it. It ran along concurrently with the inspection work.

Q. Would you say it started in the year 1917?

A. Yes, I should say it started in the fall of 1917.

Q. But somebody else estimated on the original

cost of construction, if there were any estimates?

A. Oh, certainly.

Q. Was that an Emergeney yard?

A. No.

Q. Who owned that yard?

A. It was owned by a company. I cannot tell you who the stockholders were. It was a private concern.

MR. HALLETT: But he was not working for them, he was working for the Fleet.

BY MR. EVANS:

Q. That is what I am trying to get. It was a privately owned company?

A. Absolutely.

Q. And you were there as the inspector?

A. As representative of the Fleet Corporation.

Q. Doing what then? Checking estimates, or changes and extras?

A. Incidentally, yes; primarily to see that we got what we contracted to get.

Q. After you left Manitowoc you went into some other line of business, I think, did you not?

A. After I left Manitowoc?

Q. Yes.

A. No, as I told Mr. Hallett I took one of the last ships out of the Manitowoc Yard and then I brought her around to New York and then came into the home office of the Fleet Corporation in Philadelphia.

Q. It was before that, then, that you were with Swaze, Raymon & Page?

A. That is correct.

Q. And during what years was that?

A. I should say probably about 1915 or thereabouts.

Q. How long were you associated with that firm?

A. Not very long; some six or eight months, I believe.

Q. What character of work were you doing at that time?

A. I was working on yachts, pleasure boats.

Q. When you say yachts, what do you mean?

A. That is a pretty broad field, Mr. Evans.

Q. I know it is. I heard about a yacht the other day that was more like my idea of an ocean liner, so I want to know whether that is the kind of a yacht you were building.

A. No, these were, I should say, comparatively small boats. By that I do not mean what is ordinarily termed a motor boat.

Q. Some of them were motor boats, were they not?

A. Oh, anywhere from 50 to 150 or 200 feet in length.

Q. Small boats?

A. Comparatively.

Q. And not cargo boats at all?

A. Oh, no, not cargo boats.

Q. Have you at any time made estimates of cost for the construction of ships?

A. Yes.

Q. When?

A. Since I got into this case.

Q. That was theoretical work, was it not? I am talking about estimates of cost of ships that were to be built.

A. Yes.

Q. You understand what I mean?

A. If you mean estimates of costs of ships that are to be contracted for in the future?

Q. Yes.

A. Yes, I understand what you mean. Yes, I have made such estimates.

Q. When?

A. With respect to all these vessels that I had charge of under the Engineering Corps that I told you about.

Q. You mean the river boats that you told us about?

A. Yes.

Q. Of which the only steamboats were these towboats?

A. No, I would not say that. You mean the only vessels operated by steam?

Q. Yes; is not that a fact?

A. Dipper dredges and hydraulic dredges are also operated by steam, also drill boats.

Q. Your experience in the actual making of estimates for the construction of vessels was limited to the type of vessels with which you were dealing when you were with the Army Engineering Corps on the Mississippi?

A. That is correct; that is, for complete vessels.

Q. And with that exception you have never made any estimates for the construction of any vessels, have you?

A. With the exception that I just stated.

Q. With the exception of the work you have done in connection with this case?

A. That is right.

Q. That is to say, checking our estimates rather than making estimates?

A. All right.

Q. Am I right about that?

A. Put it that way if you like.

Q. When did you become associated with the Legal Department of the Fleet Corporation?

A. About 1926.

Q. And when were you assigned to this case?

A. I cannot tell you from memory exactly, Mr. Evans, but I should judge it was the latter part of 1927 or some time in 1928, the early part of 1928.

Q. Have you been working in cooperation with Government counsel in the preparation of this case?

A. At various times, not continuously, yes.

Q. That is what I mean. I suppose none of us worked continuously on this case, but I mean your work has been done in cooperation with Government counsel and under their supervision and direction, has it not?

A. Yes, I made investigations that they requested me to make.

Q. And your function in this case was to take Bethlehem's estimates and to criticize them, was it not?

A. One of them, yes.

Q. And for that purpose you required certain information, which was not then available in the records of the Fleet Corporation?

A. I had no way of telling whether the estimates were correct until I had some data on which to base an opinion.

Q. Naturally, and, therefore, you, through counsel, asked Bethlehem to furnish such information as

you thought you would require in order to check the accuracy of Bethlehem's estimates, did you not?

A. I cannot say whether that is entirely correct. I did ask counsel to obtain certain information. Whether all the information which counsel requested originated from my requests or not, I do not know.

Q. I am asking you whether you asked counsel to procure from Bethlehem what information you thought you would require in order to check the accuracy of Bethlehem's estimates?

A. Yes, I guess that is a fair statement.

Q. Now did you get all of the information that you asked for?

A. No, I do not think I did.

Q. Tell us what it was that you asked for that was not furnished?

A. I do not know whether I can do that offhand or not, Mr. Evans. We tried to get some information on the individual price on plates and shapes on 158 and 159, and I believe Bethlehem informed us that there was no such information available.

Q. In other words, we told you that, after making a search, the original invoices had not been preserved?

A. I think that is right, yes. Now there may have been some other similar instances. I cannot say offhand.

Q. Can you recall anything else?

A. No, I cannot say that I can, offhand.

Q. So that with that exception your recollection is that you got from Bethlehem all, or substantially all, of the information that you thought you needed in order to check the accuracy of Bethlehem's estimates?

MR. HALLETT: That is not what he said.

MR. EVANS: I am asking him whether that is not a fact.

A. No, we got from Bethlehem, so far as I know, all the information which we requested which Bethlehem said was available.

BY MR. EVANS:

Q. Well, you have told us of that one bit of information, which was not furnished because Bethlehem told you it was not available, and I asked you whether there were any other items which you asked for and which you did not get?

A. I told you that I could not specifically name any other items.

Q. All right, then, I think my question was a fairly proper one, that with the exception of the invoices for plates and shapes on 158 and 159, you got from Bethlehem all, or substantially all, of the information that you thought you needed in order to check the accuracy of their estimates; is that right?

A. No, I think that is a little too broad.

Q. All right; tell me what items you asked for and did not get.

A. I have just told you that I cannot do that.

(A discussion followed off the record).

Last two questions and answers read.

THE WITNESS: All right, I will add another item that occurred to me while this discussion was going on.

BY MR. EVANS:

Q. What is that?

A. I wanted the basis on which the 1.75 factor was developed for material other than Job 12, and I never got it.

Q. Is that all you can think of?

A. Just at the moment. I may as time goes on think of some others.

Q. You told us this morning that on hull 253 the result of Brown's having applied the same factor of increase to shapes as he did to plates resulted in an over estimate on that one item of $38,623.21; that is right, it is not?

A. No, that is not exactly correct. The $38,000 item is the combined result of applying the 2.66 factor to both plates and shapes, as compared with the factors which I developed independently for shapes and plates.

Q. That was one of the criticisms that you developed in connection with the preparation of this case some time in advance of the hearings before Mr. Roberts, was it not?

A. Yes, substantially that.

Q. And you had some time before you gave your testimony at the previous hearing all of the data that you have to-day, did you not?

A. Yes.

Q. For instance, you had had the invoices on plates and shapes for 253 for something like a year, had you not?

A. I had not had them for something like a year. They had been furnished to the Fleet Corporation and I had seen them, but I had not seen them all that time.

Q. They were available, were they not?

A. If I had asked for them I presume so, yes.

Q. In other words, they were in the office of the Fleet Corporation here in Philadelphia, or their counsel's office?

A. Wherever they kept them, yes.

Q. Well, but you had ample time to go over those invoices, and in point of fact you did go over the invoices, did you not?

A. Yes, I did.

Q. Can you explain to us why it was that in testifying before Mr. Roberts with reference to this same item, you gave him the figure of increase or over estimate at $34,863.41? In other words, there was, in round figures, a difference of $4,000 between the figures as you had developed it in the testimony before Mr. Roberts and the figure as you gave it to us here to-day?

A. Yes, I can explain that.

Q. All right, I would be glad to hear it.

A. The principal reason for that difference is that in the testimony that I gave before Mr. Roberts, I ignored the fact that the 2.66 factor was not the correct factor for plates, and I used it as Mr. Brown used it, because I did not think there was enough involved in it to be particularly material.

Q. When did you discover that error and correct it for the first time?

A. When did I discover that error?

Q. Well, you say there was an error.

A. No, I do not say there was any error at all.

Q. You say that there was an error in the figure that Mr. Brown used?

A. I beg your pardon, we were not talking about the same thing. When did I discover that error?

Q. Yes.

A. When I first started to work on these estimates, some time before the hearing before Mr. Roberts.

Q. I still do not understand why, if you had that information before you and had considered it, you

gave one figure to Mr. Roberts and you now give another figure to Mr. Mason, representing, as I understand it, the same item of error, or what you call an error.

A. Well, I will give you the whole story, then. At the time I testified before Mr. Roberts I only calculated the excess due to shapes, due to the use of the 2.66 factor as applied to shapes, and, although I knew that the 2.66 factor as applied to plates was not exactly correct, I did not think it worth while to go into that, because there was not very much involved in it. Now in determining the factor that I used for shapes at that time I ignored the influence of extras, and Mr. Wood made a great deal of the fact that I ignored that influence of extras at that time before Mr. Roberts. As a matter of fact, the reason that I ignored it was because it did not amount to anything, but, because of Mr. Wood's insistence that I had made a great mistake in ignoring that factor, I now have used that factor, and in addition I have used the exact correct factor applied to plates, and I have given you the result obtained in that way.

Q. I thought that was going to be your answer, Mr. Sanford, but you did the same thing later in your testimony before Mr. Roberts, did you not?

A. Certainly.

Q. But you did not hit the same figure that you hit here. Why was that?

A. Why was it?

Q. Yes.

A. The only thing that I did in my testimony before Mr. Roberts was to take the influence of extras upon shapes. I made no change whatever in the factor of 2.66 on plates. I let that ride as it

was. That is the reason I did not hit the figure we got here.

Q. Let us see whether your memory is quite accurate about that. First you will recall—you correct me if I am wrong—

A. You have the testimony there.

Q. That you were examined in chief by either Mr. Brown or Mr. Hallett, I do not recall, and then you were cross examined by Mr. Wood, and in the meantime there was a luncheon interval, and then at the conclusion of your cross examination there was some redirect examination by Mr. Brown or by Mr. Hallett, I do not recall. Is that in accordance with your recollection of how your testimony was given?

A. If you are taking it from the transcript, I presume that is correct, Mr. Evans.

Q. Now I am reading from the transcript at page 437.

THE MASTER: Was this before or after lunch?

MR. EVANS: After lunch.

BY MR. EVANS:

Q. "The actual factor for plates, that is, the factor of increase for plates including extras, would be 2.603, and the actual factor of increase for shapes including extras except for bulb angles—all other extras except bulb angles—would be 1.789."

Do you recall so testifying?

A. I believe that is right.

Q. And as a result of that you established your own factor instead of using Brown's factor, did you not?

A. Yes.

Q. And the factor which you established was 2.3668, was it not?

A. If that is what it gives there, it was.

Q. That is what it does give. And then you corrected the total figure which you had originally given, and said: "I testified that in connection with shapes on hulls 253 and 254 the use of a factor of 2.66 applied to shapes would produce an excess in Mr. Brown's estimate of $35,863.70"?

A. Yes.

Q. "Using a factor of 1.789 instead of 1.78, which is obtained as I have just stated, the excess produced would be $35,496.91, or a decrease from the excess previously testified to of $366.79". You recall so testifying, do you not?

A. Yes.

Q. Now I ask you why it is that, having changed your figure once in your testimony before Mr. Roberts, you still gave a figure which is substantially different from the figure that you have given here before Mr. Mason?

A. I did not. The testimony that you have read and the difference that I have recited in there is due entirely to the effect of extras on the factor for shapes, as I told you a few minutes ago, and in this excess I have given here I have also applied a different factor to plates than the 2.66 factor which Mr. Brown used, and I did not do that in the testimony which you have read to me.

Q. I see. Then in developing your criticism apparently you thought it was necessary, or at least desirable, to approach the problem in three ways, each of which gave you a different answer; is that right?

A. No, it is not right. The situation is simply this, that I approached the problem in what I thought was the simplest way. In the first place, I allowed Mr. Brown's factor of 2.66 for plates to ride because I did not think the difference was very material. I did take exception to the use of that factor as applied to shapes, and in obtaining my factors I did not make use of extras because I thought the difference on account of extras was not material. Now when Mr. Wood raised the question as to why the extras were not used, naturally I figured it on the basis of extras, to show Mr. Wood how immaterial the question of extras was, and I think I showed him. Now when we came in here this time, inasmuch as Mr. Wood has raised the question of extras, I think that I have an equal right to take exception to Mr. Brown's factor of 2.66 as applied to plates, which I did not take exception to before, at least not in so far as figuring an excess was concerned, and that is what I have done. I think it is a perfectly logical procedure.

Q. Therefore, as your testimony stands to-day, you say that, by reason of applying what you say was an improper factor on the part of materials in Job 12, Mr. Brown's material costs, or estimated material costs, on a 9100-ton tanker, were some $38,600 more than they should have been?

A. In so far as plates and shapes are concerned.

Q. Yes, as to that one item. Now you said this morning that the factor of increase on rivets, comparing the price current in November of 1917 with what we will call the base price, was less than the factor of increase on plates. That was your testimony, was it not?

A. I do not know whether I put it exactly that way. Probably that was the substantial effect.

MR. HALLETT: May I have the question read?

(Question read.)

THE WITNESS: That is not exactly correct. In the first place, I think I used December as the time, December 1917, and in the second place I did not compare it with the price of plates as of that time or any other time. I simply told you what the factor was.

BY MR. EVANS:

Q. I say, you said the factor of increase was less than the factor of increase on plates?

A. The factor of increase on plates as of what time?

Q. Well, the factor that Brown used, then?

A. Yes, less than that factor.

Q. Now in making that statement you assumed that the price on rivets in December, 1917, if that is the period you used, was $4.40, did you not?

A. Let us see. The date that you have referred to, that I had in mind, was the date that I took the start with, that is—

MR. HALLETT: I think there is a confusion here.

THE WITNESS: I think there is a confusion. I would like to straighten it out.

BY MR. EVANS:

Q. You told us that the War Industry Board's price was $4.40?

A. That is right

Q. Did you want us to understand that that price was current in December of 1917, when Bethlehem submitted their estimates?

A. I do not think I made the statement. The Master asked me whether that price was in effect in November, 1917, and I told him I would not care to say without verifying it.

Q. But if it was not in effect, what possible bearing has it got on this case, because you are comparing prices which were in effect in November or December, 1917, with some other prices, are you not?

A. Yes.

Q. All right. Now unless that rivet price in December or November of 1917 was $4.40, how can you base a factor of increase on a price of $4.40?

A. You cannot, unless that was the price.

Q. And you have assumed that that was the price?

A. I have, yes.

Q. Did you ever ask Bethlehem what the actual price on rivets was?

A. I think we did. That is one of the other things we did not get.

Q. One of the things you asked for and did not get?

MR. BROWN: We asked you a lot about rivets and never got any information about them at all. That is in the correspondence.

BY MR. EVANS:

Q. Where did you get your quotations for the price of rivets in 1916 or 1915 that you gave us?

A. As I recall, those were taken from The Iron Age.

Q. Are you familiar with a handbook that is gotten out by the American Metal Market called "Metal Statistics"?

A. I have seen such a handbook.

Q. Is it reliable?

A. I believe it is, yes.

Q. Will you tell us what was the price on rivets, according to this handbook, in November, 1917?

A. In November, 1917, as shown in this handbook, the price of rivets was $4.91.

Q. And that was f. o. b. Pittsburgh?

A. Yes.

Q. In connection with your study of this question, did you ascertain when the contract for 253 and 254 was let?

A. I have known that date. I do not recall it at this time, Mr. Evans.

Q. Would it refresh your recollection if I told you that it was in September of 1915?

A. If you say that is correct, I will accept it. I do not have any personal recollection of that date.

Q. If you had that date, and in the absence of any other information, would not that be the natural date to take in order to ascertain the return price of rivets?

A. What was the date again, please?

THE MASTER: The date when the contract was let, I understand.

THE WITNESS: Not necessarily, no.

BY MR. EVANS:

Q. You took, as I understand it, a price of rivets current at the time when the price of shapes was whatever it happened to be on 253; is that right?

A. For part of the shapes, not all. They were two different prices.

Q. Why did you take the price on shapes, or the date of a particular price on shapes, instead of the

date when you knew that the plates had been contracted for?

A. To tell you the truth, Mr. Evans, we did not know a thing about when these rivets were purchased.

Q. You knew when the plates were purchased, though, did you not?

A. No, I cannot say that we did.

MR. HALLETT: We tried to get a copy of the contract to find out when they were purchased and were not able to.

MR. EVANS: You had the contracts, did you not, for the plates?

MR. HALLETT: We did not have the contract. We asked for the contract. We had the invoices and it showed that there was a contract, but we never got the contract.

MR. ROBISON: The record before Mr. Roberts shows that they were produced and enumerated in the record before Mr. Roberts.

BY MR. EVANS:

Q. What is your recollection about that, Mr. Sanford, whether you had the contract for the plates?

A. I am not positive about whether I saw the contract or not. Naturally I knew the price at which those plates were purchased, and that fixed an approximate date in my mind as probably when they were purchased.

Q. What date does that fix?

A. Whatever date it was that corresponded with the base price of 1.15.

Q. Will you tell us when that was?

A. Not offhand, I can in a moment, if you want me to dig it up.

Q. Go ahead.

A. It was evidently about April or May of 1915.

Q. That is what I thought. Now if you had the price on rivets as of April, 1915, you would have found that it was how much? (Handing witness "Metal Statistics" Handbook)

A. $1.35.

Q. $1.35, and if you had taken it in May, 1915, you would have found it was how much?

A. $1.40.

Q. As compared with the November, 1917, price of $4.91?

A. That is right.

Q. Or a December, 1917, price of $4.65?

A. That is right.

Q. So that if you had made your comparison between prices at those dates, your factor of increase on rivets would be substantially more than 2.66, would it not?

A. I have not figured it out. Probably it would be, but I had no particular reason to take those dates.

Q. Did you have any better reason for taking any other dates?

A. Yes Mr. Wood suggested that I take the other dates in the last hearing before Mr. Roberts.

Q. Mr. Wood suggested that you take some other dates?

A. Yes.

Q. For what?

A. For the purchase of rivets.

Q. He did?

A. Yes.

Q. I suppose it would be idle for me to ask at what page of your testimony that appears.

I will ask you whether you have not read over your testimony?

A. I have, yes.

Q. How recently?

A. About three days ago, I think.

Q. Then perhaps it would not be so idle for me to ask in what part of your testimony that appears?

A. Naturally it was in the cross examination. Just where I could not say. Perhaps I could find it for you.

Q. Is this the testimony to which you refer, on page 385, or if that is not it will you see if you can refer to the part of the testimony that you have in mind?

(Witness handed transcript of testimony.)

A. Yes, this is what I had in mind.

Q. All right, will you read us from Mr. Wood's questions and your answers where it was that he suggested that you take the date of December, 1915, for purposes of comparison on rivet prices?

A. I do not say that he suggested that specific date.

Q. I understood you to say exactly that.

A. If I did, I said the wrong thing.

Q. What you really meant to say was that Mr. Wood suggested that, if you were going to make comparisons of prices on all materials that went into Job 12, you ought to take rivets into consideration; is not that right?

MR. HALLETT: Oh, no, I think you had better read the testimony.

A. Mr. Wood asked me why I did not make a comparison with respect to rivets.

MR. EVANS: Exactly.

THE WITNESS: And I told him because I did not know when the rivets were purchased, and then he said that I knew the period during which the ships were built.

BY MR. EVANS:

Q. Yes, and what did he suggest that you might do?

A. I assumed that he had the idea in mind that if I knew—

Q. What did he say? You told us it was the result of a suggestion that Mr. Wood made that you gave us a figure here to-day.

A. Mr. Wood told me that I knew the period during which the ship was built, therefore inferring that, that being so, the price of rivets in effect at that time would be a proper price to use for the purposes of comparison.

Q. So that was your reason for taking the price of December, 1915?

A. Not entirely, no. It so happened that that was the date at which a large portion of the shapes for hull 253 were purchased—I mean that was the date at which the price for these shapes was effective.

Q. But if, instead of using the price on shapes to determine the proper date, you had used the price on plates, you would have gotten an entirely different price on rivets, would you not?

A. Oh, quite so.

Q. Just to refresh your recollection, I direct your attention to page 427 of the testimony, which was during your examination before Mr. Roberts: "Mr. Brown: We call for the production of all contracts and purchase orders relating to plates and shapes

for hulls 253 and 254, and hulls 244 and 245, Fore River; and Sparrows Point hulls 158 and 159. Mr. Robison: We are producing a contract with the Carnegie Steel Company for plates and shapes for hulls 253 and 254, together with copies of certain letters modifying it." Refreshing your recollection with that, do you not now recall that we did furnish Government counsel, while you were on the stand, copies of the contracts for plates and shapes on 253 and 254, as well as 158 and 159 and 244 and 245?

A. Yes, it so appears in the transcript.

Q. And you had those contracts before you during your testimony, did you not?

A. I do not know whether I had them before me. They were there, yes.

Q. They were available to you?

A. Yes.

Q. When you came to examine the actual cost of plates and shapes for 158 and 159, you found that the base price was substantially higher than the base price for plates and shapes on 253 and 254, did you not?

A. Yes.

Q. Can you give us that in terms of percentage, approximately?

A. Well, I can tell you this way, that my recollection is that the average price of plates and shapes for 158 and 159 was 1.84 and the corresponding average for 253 was about 1.52.

Q. And therefore I think you said this morning that as the average price of plates and shapes was more in the case of 158 and 159, it was natural to assume that the average price of materials in Job

12 other than plates and shapes was higher in the same proportion than on 253 and 254; is that right?

A. Yes, I think that is a fair conclusion.

Q. So that, assuming that your assumption in that regard is correct, your conclusion would be that the actual cost of material in Job 12 on 158 and 159 was substantially higher than the actual cost of the same material on 253 and 254?

MR. HALLETT: What do you mean by actual cost?

MR. EVANS: Cost per light weight ton.

THE WITNESS: That is different.

(Question read.)

A. That would not necessarily follow. It might follow, Mr. Evans. It would depend upon the relation between the light weight tonnages of the respective ships.

BY MR. EVANS:

Q. Then I will put it this way, that the actual cost of material in Job 12 on 158 and 159 would, on your assumption, have been substantially higher per unit of material, whatever that unit may be, than the cost of the same material in Job 12 on 253 and 254; does not that necessarily follow?

A. Yes, it was.

Q. Of course it does. And therefore, if that is so with regard to the cost of materials in Job 12, it must also of necessity follow that the reverse is true as to the cost of materials other than Job 12; is not that right?

A. Not at all, no.

Q. It does not follow? Let us see if it does not. The material cost in the two ships per light weight ton was substantially the same, was it not?

A. Yes. May I look at those actual figures?

Q. Certainly.

A. It was substantially the same with respect to 253 and 158 per light weight ton on the basis of the correct material weight.

BY MR. HALLETT:

Q. But not on the figures that were before Mr. Brown?

A. Exactly.

BY MR. EVANS:

Q. Now then, if you assume that the cost of the materials in Job 12 was more on 158 than on 253, then it must necessarily follow that the cost of materials other than Job 12 was less on 158 than it was on 253?

A. No.

Q. Why not?

A. Because that would depend entirely upon the relationship between Job 12 and the other material, which is not the same in the two cases.

Q. Now let me read your answer to that same statement when it was put to you before Mr. Roberts and see whether we can make some progress that way. You were asked at page 390:

"Q. If the material cost per light weight ton had been the same on both ships, then it would have been perfectly appropriate for Mr. Brown to have used the composite material factor to the whole material cost of 158 and 159, wouldn't it?

A. Do you mean to ask me if it would be proper to use a single factor?

Q. If the material cost per light weight ton was the same on both ships.

A. That would not necessarily follow, no.

Q. They were built during the same period?

A. Approximately, I couldn't say exactly.

Q. If the material cost per light weight ton was the same on both ships, and it developed that the cost of material entering into Job 12 or the cost of the steel was higher than on 253, then the cost of the material entering into the ship other than steel was lower than on 253, wasn't it?

A. It might have been, depending upon the—

Q. It must have been, mustn't it? If your average is the same for all the material that goes into the ship, but the cost of steel per ton was higher on 158 than on 253, then the average cost per ton of the remainder of the material in the ship must have been lower on 158 than on 253?

A. Quite true."

Now that is what you said the last time, isn't it?

A. Yes.

Q. Is that the same question that I have asked you just now?

A. Yes.

Q. And is your answer the same as it was before?

A. No.

Q. Why have you changed your answer?

A. Because the answer that I gave you the last time was a snap judgment that you pressed me to, or rather Mr. Wood did, and on mature reflection I am convinced it was wrong.

Q. Did you correct it at any time in your testimony before Mr. Roberts?

A. I don't recall that I did, no.

Q. You had plenty of opportunity to correct it, didn't you?

A. Well that would depend entirely on when that statement was made. I don't recall.

Q. It appears at page 391 of your testimony and the hearings continued for some considerable time after that, didn't they?

A. I don't know, you haven't given me the dates.

Q. Well we will give you the date. Your testimony to which I have just referred you was given on May 27th. Will you accept that as correct?

A. Yes, if you say so.

Q. Whereas, according to the record, the proceeding before Mr. Roberts was not closed, that is the taking of testimony was not closed until June 21, 1929. So that if you had made a mis-statement in your testimony you certainly had ample opportunity to correct it, hadn't you?

A. As far as point of time was concerned, yes. I was not here all of the time. Are you positive that I did not correct it before Mr. Roberts?

Q. Now I don't want to be positive about anything in this case?

A. Well I simply am asking for information.

Q. And I am asking you whether you have any recollection of correcting it and I will say to you for what it is worth that I have read your testimony over and I am pretty positive that you never did correct it. On the contrary, you repeated it.

A. Well I don't think that I repeated it. I do think that I gave some additional testimony, not directed exactly toward that same question but which, as a matter of fact, was fundamentally the same proposition.

Q. Let us see if you did not repeat it. Mr. Roberts asked you substantially the same question and I am reading now from page 396:

"What he is getting at is, if he allowed at the rate of 266 instead of 189 increase for Job 12,

if it is a fact that those two cost about the same per light weight ton, he would allow too much because he would get his light weight tonnage out of balance.

THE WITNESS: That is right.

BY MR. WOOD:

Q. You would allow too little for material other than on Job 12 to maintain your balance. If you are going to reduce the factor for Job 12 to 189".

And that is what you did, isn't it?

A. Yes.

"Q. Then on the basis of the actual cost per light weight ton, you have to increase your factor of 175 that is applicable to the remainder of the material.

A. If you are going to keep the same total material cost per light weight ton."

Is that correct? I mean did you so testify?

A. Yes, I so testified.

Q. And now you want to change your answer?

A. I do.

THE MASTER: May we have why?

MR. EVANS: If the witness wants to tell us why I have no objection.

THE WITNESS: Mr. Evans asked me if it was necessarily true that the cost per light weight ton, assuming first that the material costs were approximately the same per light weight ton, if the cost of the light weight ton of the Job 12 material was substantially more in the cost of Hull 158 than in the cost of 153, that that being so, it must necessarily be true

that the material other than Job 12 in 158 must be at a less price than 253 in order to maintain a balance. Have I stated it correctly?

MR. EVANS: That is it exactly.

THE WITNESS: It is not necessarily so unless the relations between Job 12 and other material in the two cases are identical.

BY THE MASTER:

Q. You mean in quantity?

A. No, proportion. For example, in the one case Job 12 is a certain proportion of the total material and if in the other case Job 12 was the same proportion that would be true, but it is not necessarily true unless that is a fact.

BY MR. EVANS:

Q. Did you make any study to determine whether the proportion of material in Job 12 to material other than Job 12 was or was not the same in the two boats?

A. If you take the material in Job 12 in both cases, that is Hull 253 and Hull 158, and adjust them to the same unit cost, you will find that the proportion in Job 12 in both cases is approximately the same. That means this, that the excess in Job 12 on Hull 158 is due almost entirely to the increased cost of steel in that job, and that being so, the other material other than Job 12 apparently would be on very nearly the same basic prices.

Q. On 253?

A. Yes.

Q. You have said, if I understand your statement, that the proportion, and by that I suppose you mean the proportion in weight of material in Job 12?

A. No, not in weight, in cost.

Q. Proportion in cost?

A. Sure, we are talking about costs, aren't we?

Q. Well I don't know whether you are talking of costs or whether you are talking about weight. I am trying to find out.

A. Sure we are talking about cost per light weight ton, as I understand it.

Q. Now you say that if the proportion of materials in Job 12 to the total of material in the entire vessel is the same on the two vessels then if your cost of the material in Job 12 is higher on one boat than on the other but your total material cost is the same it would follow, as you said in your testimony before Mr. Roberts, that the cost of material other than Job 12 must be lower?

A. Yes, that is right in that particular case.

Q. And if I understood your statement you said that was the particular case in this particular comparison?

A. When did I say that.

Q. Well, that is what you just said.

A. Just now, you mean?

Q. Yes, just now.

A. No, I didn't say that. I particularly said that in this particular case, the proportion in the total of material in Hull 158 was more than it was in the total material of 253, and the reason for that difference primarily is due to the fact that the unit price of material in Job 12 on Hull 158 is different than the unit price of material in Job 12 on 253.

Q. And then the total material cost is about the same on the two jobs?

A. Yes.

BY THE MASTER:

Q. As I understand it, by reason of your exper-

ience and general familiarity with the shipping industry, you would now regard yourself, and others would regard you, as competent to estimate the cost of constructing vessels similar to those we have under consideration here?

A. I would so regard myself.

Q. And others would so regard you?

A. I hope so.

Q. If I were to ask you whether you could make for me an estimate of the proper contract price for a type of tanker talked of here as No. 140, would you feel that you could do that for me?

A. Yes. There would be two different ways to get at that.

Q. Would it be a difficult thing for you to do?

A. It would be quite a tedious job unless I had data available as to the previous cost of similar vessels or somewhat similar vessels, that is if I had to start from the beginning and knew it would be a long, tedious task.

Q. Now, with your experience, you would be able to do that thing now?

A. Yes.

Q. And that is because of your general familiarity with that type of boat?

A. With most any type of boat. I, for years, was the head of the estimating department, so to speak, of the Fleet Corporation, in which we reviewed and made counter-estimates to estimates submitted by every shipyard in the country.

Q. When did that begin?

A. That began rather early in the game, but my contact was not at that time. My contact with that was first in 1921 and from then on.

Q. When did that practice begin in the Fleet Corporation?

A. This was not with respect to contract prices but with respect to estimates for changes submitted by the various builders. The practice began in the Fleet Corporation, I should say, in 1918, although it was not thoroughly organized until the following year.

Q. And who had charge of that work when you first knew of it in 1918?

A. I cannot say who had charge of it at the very beginning. I have a man's name in mind that escapes me right now, but some time later it was taken in charge by a man by the name of Yomans and I later succeeded Mr. Yomans.

Q. And what was the method that you adopted for the Fleet Corporation when you first undertook to check estimates for the building of ships, and how did you do it?

A. This was not for the building of ships.

Q. I understand you were estimating for changes and now I am asking you whether you also checked the estimated cost of the building of ships for the Fleet Corporation?

A. No, we had no occasion to do that because at that time all the contracts had been entered into and the prices established and there was no occasion to check the total cost.

Q. Well, would the method be different in estimating the cost of changes than in estimating the cost of the total ship?

A. No, the method is substantially the same.

Q. And the sources of information would be substantially the same?

A. Yes.

Q. Well, to put a hypothetical case, assuming that instead of merely estimating the cost of changes you had been estimating the cost of a completed ship at such time, what would you have done?

A. Well, we would have first ascertained what data we had available on a ship of that type or similar type, and after we had that data available or any cost data of a similar vessel for a rough estimate we would do substantially what Mr. Brown did, assume and evaluate the factor of increase on the different elements going to make up the total cost of the ship and in that way arrive at a total cost. Now if we did not have that data available we would then have to take the detailed plans and specifications and take off bills of material and in detail figure the weights and then the costs of all the material going into the ship, and also make up an estimate for labor, and having obtained our material and labor, apply the proper overhead percentages to it and any items for any contingencies that might be thought proper.

Q. And were the records of the Shipyards in the country, during 1917 and 1918, available to the Fleet Corporation for that information, do you happen to know?

A. Not generally, no. What data and information we had of that character had been accumulated in the office of the Fleet Corporation from various sources; but we could not go into a shipyard, and not only could not but did not have the time to go into a shipyard and ask them how they arrived at the cost of this, the cost of that or something else, unless we got into a dispute with them as to the cost of a particular item of change they had submitted, and then we might ask them to substantiate that item and their

costs, and we might even prepare and did often prepare a counter-estimate which we would ask them to accept.

Q. So with that data it would be necessary for you to take your specifications and build up from those, from the items that entered into them?

A. Yes.

BY MR. HALLETT:

Q. But I understand you are describing the situation as you knew it for 1918 at least, or 1919?

A. Yes, not prior to that time.

Q. And you did not know the situation that existed in 1917 and 1918?

A. I was not in the home office at that time.

BY THE MASTER:

Q. I understand that and I think the record shows that Mr. Sanford was not in the position to do these things for the Fleet Corporation at that time, but even in 1917 records were available at some place or other throughout the country for general types of ships?

A. In the shipyards, yes, that is in those shipyards which were well established. Possibly not in the new ones.

Q. Were there any tabulations of costs kept by any organized Marine group, such as Naval Architects or Marine Architects or any tabulating association, giving costs of vessels? Did Lloyds keep such a cost?

A. So far as I know, and I may be mistaken on this, Lloyds do not keep such a cost. People who are in the business of appraising vessels naturally keep a record of all sales of vessels so that they have a basis for appraisals, and some few magazines have

from time to time published schedules of sales of vessels and such information is very difficult to get.

BY MR. HALLETT:

Q. You built up yourself, did you not, a schedule of certain changes and extras that you used, after you had an opportunity to do it, as a rough graph?

A. Well we had occasion to review and pass a number of changes and extras and after we had reviewed a number of the same type I got very familiar with it and we could tell with very little trouble whether an estimate was out of line or not based on our previous experience.

BY THE MASTER:

Q. Of course, in time, after you got enough changes of different characters, you would pretty nearly have the change of the whole boat so that you would have the whole thing there?

A. Well that would depend.

MR. BROWN: I offer in evidence the testimony of Mr. G. S. Radford which was given at the previous proceeding before Mr. Roberts, upon the ground that he is out of the jurisdiction and with the expectation that I expect to call Mr. Radford in rebuttal and expect to have him present in order that the Master may have the benefit of his attendance.

MR. EVANS: We will not make any objection to the offer of Mr. Radford's testimony upon the ground that he is not beyond the service of a subpoena but we will object to the offer of his testimony if he is going to be called to testify in person. It is either one thing or the other.

THE MASTER: Then, as I understand it, the testimony taken before the Master, in the

person of Mr. Roberts, is now offered as a part of the Government's case in chief and to be withdrawn if Mr. Radford can be induced by subpoena or otherwise to attend in person?

MR. BROWN: Yes, that is what I want. I do not want both of them in.

MR. EVANS: There is no objection to that.

THE MASTER: It is admitted, subject to the understanding that in the event that Mr. Radford can be and is called it will be withdrawn.

MR. BROWN: There were one or two admissions in the previous proceeding which I think should go in and one relates to Mr. Schwab's stock interest in either one or two of the Bethlehem companies, which I think appears at page 429. Incidentally this is because I understand that our friends would like, if possible to avoid the necessity of calling Mr. Schwab for examination at the present trial. If Mr. Schwab was expected to be called I would wait and ask him about this matter at that time, but I am not going to insist on their calling Mr. Schwab and they may offer his testimony. At page 429 it states:

"It is conceded that Mr. Schwab's holdings of voting stock in Bethlehem Steel Corporation in 1917 ranged from 33 per cent. of the total voting stock outstanding on April 2nd, 1917, to 37.1 per cent. thereof on October 1, 1917, and that during 1918 his holdings of voting stock in the Bethlehem Steel Corporation arose from a minimum of 21 percent. in January 2, 1918, to a maximum of 27.5 per cent. on April 1st, 1918, and that his holdings of said stock for the bal-

ance of that year were approximately 27.5 per cent. of the voting stock."

Then we also offer the admission at page 736 of the previous proceeding to the effect that:

"During 1917 and 1918 Charles M. Schwab was the largest individual stockholder of the Bethlehem Steel Corporation."

I think it probably should be noted on the record that we offer all agreements of counsel which appear in the record of the previous proceeding which may perhaps have been omitted thus far in our reference to the proceedings. I do not know whether there were any others than we have already introduced but I presume if there were both sides would like to have them in.

MR. WOOD: I think we are willing to say any agreement we made before we will certainly stand by now, whether it is a part of the record or not.

MR. BROWN: I would like to offer for the purpose of having into this record notes of the previous testimony starting at the middle of page 283, as follows:

"Mr. Brown: We offer in evidence a letter dated February 7, 1918, addressed by the Purchasing Agent of the Bethlehem Shipbuilding Corporation, Limited, to the Emergency Fleet Corporation, together with an enclosure therein referred to. It is agreed subject to correction by counsel for the Government that the Western mill referred to in this letter is not a mill owned or operated by any of the Bethlehem Companies.

Mr. Roberts: The letter and enclosure are referred in evidence as G-161.

Mr. Brown: It is agreed between counsel for Bethlehem and counsel for the Government that the ships known as Hulls Nos. 150, 151, 153 and 170 referred to in correspondence which has been offered in evidence became the subject of contract No. 191, a copy of which is attached to the pleadings and is a part of the evidence in this case.

It is also agreed that the ships known as Hulls Nos. 215 and 216 referred to in Exhibit G-122 at page 272 of the Concession of Documentary Evidence likewise became the subject of contract number 230.

It is also agreed that the 11,800 ton cargo vessels to be constructed at the Union Plant and referred to in Exhibit G-132 at page 388 of the Concession of Documentary Evidence became the subject of contract number 301. Is that right?

Mr. Wood: That is right.

Mr. Brown: It is also agreed that the three cargo vessels of about 7400 tons to be constructed at the Harlan plant and referred to in Exhibit G-109, at page 225 of the Concession of Documentary Evidence, became the subject of contract 178.

Mr. Wood: That is right.

Mr. Robison: In part.

Mr. Brown: Became the subject in part of contract No. 178.

Mr. Wood: The three tankers that are in that contract were referred to in the same letter.

Mr. Brown: It is also agreed that the three tanker vessels of about 7500 tons referred to in Exhibit G-109 to be constructed at the Harlan plant also became the subject in part of contract number 178.

It is agreed that Sparrows Point hull 176 referred to in Exhibit G-112, at page 233 of the Concession of Documentary Evidence became the subject of contract No. 196.

It is agreed that the five tank vessels of about 10,100 tons, to be constructed at the Union plant and referred to in Exhibit G-109 at page 224 of the Concession of Documentary Evidence became in part the subject matter of contract 177, and that subsequent to the date of said Exhibit the number of said tankers was increased from 5 to 12, said increase being in pursuance of Exhibit G-121, appearing at page 271 of the Concession of Documentary Evidence. Is that right?

Mr. Wood: That is right.

Mr. Brown: It is agreed that the three tank vessels of about 10,100 tons to be constructed at Sparrows Point plant and referred to in Exhibit G-109, at page 224 of the Concession of Documentary Evidence became the subject matter of contract No. 179.

It is agreed that the three tank vessels of about 9100 tons, to be built at the Fore River plant and referred to in Exhibit G-109 at page 225 of the Concession of Documentary Evidence became the subject matter of contract 183.

It is agreed that the six 10,100 ton tankers to be built at the Union plant and referred to

in Exhibit G-132 at page 388 of the Concession of Documentary Evidence became the subject matter of contract 301. Is that all right?

Mr. Wood: Yes, there were six cargo boats in that one.

Mr. Brown: They have already been in.

Mr. Wood: That is right.

Mr. Brown: It is agreed that the four 10,100 ton tankers and three 7400 ton cargo vessels to be constructed at the Sparrows Point plant and referred to in Exhibit G-127, at page 342 of the Concession of Documentary Evidence became the subject matter of contract No. 226.

It is agreed that the three 10,100 ton tankers to be constructed at the Sparrows Point plant and referred to in Exhibit G-132, at page 387 of the Concession of Documentary Evidence became the subject matter of contract No. 300.

It is agreed that the three tankers of about 9100 tons, to be constructed at the Fore River plant and referred to in Exhibit G-132 at page 386 of the Concession of Documentary Evidence became the subject matter of contract number 299.

It is agreed that the three 7500 ton tankers and seven 5100 ton cargo vessels to be constructed at the Harlan plant referred to in Exhibit G-132 at page 387 of the Concession of Documentary Evidence became the subject matter of contract 314.

It is also agreed that the tugs referred to in Exhibit G-109 became the subject matter of contract 184."

It being understood that the Government has

a right hereafter to offer in evidence any exhibits which it may see fit to do, there is only one other document we have to offer now, and the exhibit I refer to is the Exhibit previously offered as Exhibit G-160 which appears at page 492 of the Concessions of Documentary evidence, and with respect to that Exhibit there was an agreement of counsel which appears at page 281 of the previous proceeding and which I presume there is no objection on the part of Bethlehem counsel to making with respect to the same exhibit at this time. The agreement or admission that is referred to which appears at pages 281 and 282 of the previous meeting reads as follows:

"Mr. Brown: With respect to the letter of October 2, 1918, which has been offered in evidence as Exhibit G-160, it is conceded by counsel for Bethlehem that at the time this letter was written Edward N. Hurley was chairman of the Shipping Board; that Mr. Farr referred to in the letter was President of the American Shipbuilding Company; that the contracts of the American Shipbuilding Company referred to in this letter were contracts between it and the Fleet Corporation in the sense that they were executed by the Fleet Corporation; that Cuthell referred to in the letter of October 2, 1918 was at that time general counsel for the Fleet Corporation and had been either assistant general counsel or general counsel during the period between November, 1917 and January 1, 1919; and that in stating in said letter that Schwab was acting on Cuthell's advice,

the advice referred to was that no matter what prices were designated in the Shipbuilding contracts executed by the Fleet Corporation, the Fleet Corporation had the legal right to subsequently adjust such prices so that they should afford only just compensation to the ship builder."

I assume the same agreement may be noted at the present time?

MR. WOOD: That is right.

EVIDENCE ON BEHALF OF BETHLEHEM

JOSEPH W. POWELL, having been duly sworn, was examined and testified as follows:

BY MR. EVANS:

Q. What is your present business?

A. President of United Dry Docks Incorporated.

Q. Where is your place of business now?

A. 11 Broadway, New York.

Q. What does the United Drydocks Company do?

A. Builds and repairs ships.

Q. So you are still in the shipbuilding game?

A. Yes, sir.

Q. You are, however, no longer connected with the Bethlehem Shipbuilding Company or with the Fore River Shipbuilding Company?

A. No.

Q. Or with the Bethlehem Steel Company?

A. No.

Q. When did you sever your connection with Bethlehem?

A. My actual connection was severed in December, 1920, although I maintained some connection for some little time. I think I finally retired in April, 1921, from the office of Bethlehem Shipbuilding Corporation Limited, and, through an oversight, I remained as president of the Fore River Shipbuilding Company, which was a dormant company, for several years.

Q. But, so far as any actual participation in the business of Bethlehem Shipbuilding Company, that terminated in December, 1920?

A. Practically, yes.

Q. You do have, however, some small financial interest in the outcome of this case?

A. Yes, at the time of severing my connection with Bethlehem it was arranged with Mr. Grace that I was to participate in seven-tenths of one per cent. of the profits that accrued on Emergency Fleet contracts except contracts on troop ships which were on a different arrangement.

Q. And that was part of the arrangement relative to the adjustment of the salary and bonus and so forth while you had been with the company?

A. Yes.

Q. What position, if any, did Mr. Schwab hold with the Fore River Shipbuilding Company?

A. He had no official position with the Fore River Shipbuilding Company.

Q. What position, if any, did he have with the Bethlehem Shipbuilding Corporation?

A. He had no official position with Bethlehem Shipbuilding Corporation.

Q. While you were connected with the Fore

River Company and later with Bethlehem Shipbuilding Corporation, to what extent, if any, did Mr. Schwab interfere in the conduct of the business of these corporations?

A. He never took any part at all in the conduct of the corporations.

Q. What experience did he have in shipbuilding?

A. He had no experience in shipbuilding.

Q. Was it your practice to consult Mr. Schwab regarding the submission of estimates of ships that you were contracting to build?

A. Never.

Q. I am speaking now of the time prior to the date when he became Director General of the Fleet Corporation?

A. That applies both to the time prior to his connection and afterwards.

Q. In 1918 he became Director General of the Fleet Corporation, did he not?

A. Yes.

Q. Do you recall the date?

A. It was in April, 1918.

Q. How long did he continue in that position?

A. Until some date between the Armistice, the 11th of November, 1918, and Christmas.

Q. During that time you were having negotiations with representatives of the Fleet Corporation, both regarding contracts for additional ships and also regarding matters that were coming up from time to time in connection with ships for which you had already contracted. Am I correct in that statement?

A. Yes.

Q. In connection with any of these matters, did you deal with Mr. Schwab at all?

A. Never.

Q. With what representatives of the Fleet Corporation did you deal?

A. With pretty much everybody else in positions of authority. With Mr. Piez, Mr. Radford, Admiral Bowles, Mr. Cox, Mr. Kinley, Mr. Kuehnle, Mr. Cuthell, Mr. White, Mr. Stern, and probably a lot whom I have forgotten.

Q. During that time did you consult with Mr. Schwab about any of your shipbuilding problems or contracts?

A. Never. The only occasion on which I have any recollection of referring to the shipbuilding program was at the time probably in May, 1918, or June, when the Fleet Corporation was considering the building of additional troops Mr. Schwab said to me one day that they would require more troop ships and that it would be up to Bethlehem to build them and it would be up to me to take the matter up with the other officers of the corporation.

Q. Did you at any time discuss with Mr. Schwab prices?

A. Never.

Q. Or estimates?

A. Never.

Q. During that period did Mr. Schwab have anything whatever to do with the Bethlehem yards?

A. No, he had nothing whatever to do with them. In fact he rather ignored us, as I think I said when I testified before, and I could with great difficulty even get him to come to our yards to talk to our men, a service he was performing for all of the other shipyards.

Q. You mean talking to them in a 4th of July spirit?

A. Yes.

Q. Boosting up the morale of the forces?

A. Boosting the morale.

Q. That was the job that he was principally undertaking to do for the Fleet Corporation, was it?

A. That was one of the principal jobs and he did a successful job at it too.

Q. Would you say that Mr. Schwab was competent to either estimate or criticise estimates of cost in estimates?

A. No, I should not.

Q. Had he any experience whatever in that respect?

A. None whatever.

Q. Down to the time that Mr. Schwab gave up the position of Director General of the Fleet Corporation and severed his connection entirely with the Fleet Corporation, had you completed any of the contract ships?

A. No, sir.

Q. Was there any way at that time of telling or foretelling with any degree of accuracy what any of these ships would cost?

A. No. They were not near enough completed and the cost records were in such shape that it was absolutely impossible to tell what the ultimate results would be.

Q. So that at that time any forecast as to whether Bethlehem would or would not make anything under the Half-savings provision of the contract was nothing more than a guess?

A. That is a correct statement.

Q. Will you tell us something about your training and experience as a shipbuilder?

A. I entered the Naval Academy in 1893, grad-

uated in 1897. After a few months at sea I returned to the academy to pursue a post graduate course in naval architecture. When the Spanish American war broke out I went to sea and served on the New York through the duration of the war. I returned to this post graduate course after the war in 1898 and continued the course at the Naval Academy, until the Fall, until October, 1899, when I was sent to the University of Glasgow to complete my education as a naval architect. I graduated at the University of Glasgow the next Spring and returned to the United States and went on duty at the Brooklyn Navy Yard as General Assistant to the Naval Constructor, who was the late Admiral F. T. Bowles. I was ordered from the New York Navy Yard to the William Cramp & Sons Ship & Engine Building Company, in Philadelphia, in July, 1902, and acted as Assistant Naval Constructor and practically in charge of the shipbuildings for the Navy at that plant through most of the period until 1906. In 1906, July, I resigned to accept the position of Assistant to the President of the William Cramp & Sons Ship & Engine Building Company and remained in that position until May, 1914, when I became president of the Fore River Shipbuilding Company of Quincy, Massachusetts. In 1917, in August, it was determined to consolidate the various shipbuilding properties that belonged to Bethlehem, and this consolidation was completed and went into effect about October 1st, 1917. I was put in charge of the manufacturing and sale, so far as Bethlehem Shipbuilding Corporation was concerned, with headquarters at Bethlehem, Pa. The Bethlehem yards comprised the Fore River Yard, the old Crescent Shipbuilding Company of Elizabethport, known

then as Samuel Moore & Sons, the Harlan & Hollingsworth Company at Wilmington, Delaware, the Sparrows Point Plant of the Maryland Steel Company at Sparrows Point, Maryland, the Protrara and Alameda works at the Union Shipyard at San Francisco. I remained as vice-president and operating head of Bethlehem Shipbuilding Corporation until the end of December, 1920. In the Fall of 1921 I went to Washington with the United States Shipping Board, about the 4th of September, and became president of the Emergency Fleet Corporation a few weeks later and remained in that capacity until the 4th of March, 1922. I engaged in various private businesses from that time until about three years ago when I was instrumental in organizing the United Drydocks and upon its giving business I acted as Chairman of the Executive Committee and then later the presidency and have been actively engaged since that time.

Q. I suppose it is fair to say that as the result of your experience you had some familiarity at least with the problems confronting a man attempting to estimate a cost of ships to be constructed?

A. I should think that was a fair statement.

Q. I want to go back for a moment as to clear up a statement as to which I may have led you in error. It appears from one of the Exhibits which has been offered in evidence, that, in point of fact, there were four of the contract ships which were completed on or about September 27th, 1918. They were Hulls 150, 151 and 153 under contract 191, and they are what we have called the Union stock ships, are they not?

A. Yes.

Q. And also Hull 176 under contract 196 at Spar-

rows Point, that is what has been called the Sparrows Point stock ship?

A. Yes.

Q. Can you tell us whether even on these vessels, which apparently had been completed prior to the dates when Mr. Schwab gave up his position as Director General of the Fleet Corporation, that you had your so-called returned costs of those ships, or final costs?

A. I am quite clear that we did not have and that I had no knowledge of the probable saving on any of the contracts at the time I left Bethlehem.

Q. The amount of saving was dependent, of course, among other things, upon the determination of the so-called base wage rate?

A. Yes. Of course those contracts were not necessarily indicative of the later contracts anyhow, because they had been taken over in varying stages of completion.

Q. I understand that, but even as to those particular contracts, or as to those particular boats under those contracts, because I observe that under contracts 191 there were four boats, were there not?

A. Yes.

Q. Three of which were completed during 1918 and the fourth was not completed until May 8th, 1919?

A. Yes.

Q. Now even as to those boats which had actually been completed in 1918, can you tell us whether you had at that time or at any time during Mr. Schwab's connection with the Fleet Corporation any information as to what the savings would be on these contracts?

A. We had no figures upon which a reasonable

judgment could have been based as to what the savings would be.

Q. Do you recall whether at that time there had been any determination of the question of the proper base wage rate to be used as applied to the provision of the contract for increases?

A. No, I do not, but we were in a continual tangle with the Emergency Fleet Corporation as to what would be allowed as cost and what would not, and there were many questions unsettled, so that even if the ships had been finished, if the last of the ships had been finished, we still would not have known with any degree of definiteness what our savings would be.

Q. Do you recall when it was approximately that you were first told that the Shipping Board or the Fleet Corporation would expect Bethlehem to construct additional vessels, by which I mean vessels in addition to the ships under construction which had been requisitioned under the August requisition order?

A. No, I cannot give you any definite date. There were various conversations with various people, so that we knew for quite some period before matters came to a definite issue that we would be called on to handle additional tonnage.

Q. Do you recall a conference which you had with representatives of the Fleet Corporation on December 12, 1917?

A. Yes.

Q. Did you keep a diary during this period?

A. Yes.

Q. Have you got your diary with you?

A. Yes.

Q. I guess it is hardly necessary for me to ask

but will you state whether during this period you were a pretty busy man?

A. Yes, I was a pretty busy man.

Q. Did you serve very long at any one place?

A. Not very long.

Q. You did a good deal of traveling?

A. A great deal.

Q. Will you refer to your diary and see whether you find there any reference to this meeting that you had with representatives of the Fleet Corporation on December 12, 1917?

A. Yes.

BY MR. BROWN:

Q. Mr. Powell, would you explain to me the general nature of the diary? I never looked at your diary, as you know, but if you could explain what your intention was in connection with the diary, whether to note items of importance in a business way that had occurred during the day, or just what the purpose was in keeping the diary, I would be glad to have it?

A. Well, ever since 1906 I have made it a point to jot down at the end of the day, or the day following, where I was, and any items that would seem to me at the moment to be of interest. Sometimes, if I had time or matters were important, I went into more detail than at other times, but it has been generally with a view of briefly summarizing important facts that I might at some future time want to refer to.

Q. The important events which had occurred during the day?

A. Exactly.

BY MR. EVANS:

Q. Will you refer to the diary under date of December 12, 1917?

A. Yes, my diary reads: "Arrived Washington, 8 o'clock. Willard. Appointment, Harris 10:30. Saw him and he told me who to see. Also saw Hurley who said he wanted quick action and no transports. Saw Radford and went over a situation and outlined procedure. Had conference with Radford in P. M. With Brown present. At hotel all evening working."

Q. Who was Harris, to whom you referred in your diary?

A. The Harris to whom this diary refers was Rear Admiral Harris, a Civil Engineer in the Navy who was at that time acting as general manager of the Emergency Fleet Corporation.

Q. Who was Mr. Hurley referred to?

A. Mr. Hurley was Mr. Edward Hurley, the chairman of the United States Shipping Board.

Q. The Radford, I suppose is the Radford who has been referred to heretofore in this case?

A. Yes.

Q. And Brown is Harry Brown?

A. Brown is Harry Brown.

Q. Can you tell us whether Mr. Piez was at that time connected with the Fleet Corporation?

A. Yes, he was, I should say just immediately after his connection. It was within a very few days one way or the other.

Q. Can you tell us whether it was on that occasion, namely, on December 12, 1917, that you were first informed that Bethlehem would be expected to take on additional tonnage or whether you had been told that previously?

A. Well, I cannot state any definite occasion on which we had been told previous to that meeting that we would be expected to take on additional tonnage. I had been so informed by various people in con-

nection with the Fleet Corporation. I would like to add that my first meeting with Mr. Piez after he joined the Shipping Board was on the 28th of November, so that he was at that time vice president of the Emergency Fleet Corporation.

Q. Now, referring to the information that you had received prior to this conference of December 12, had you been told how many vessels Bethlehem would be expected to undertake?

A. No.

Q. And I suppose, of course, you had not been told the particular sizes or types of vessels?

A. No, I should say not, but we had a very definite idea that we were going to be required to take as many as we could of the type of ships that had not been let to other shipbuilders and that we knew would be necessary to complete the program that the Fleet Corporation had in mind. By that I mean tankers, troops' ships and the type of ship that required shipbuilding experience and that could not be built in the yards that had grown up over night.

Q. Is that the type of work that you wanted?

A. No, that was not the type of work that we wanted.

Q. And you had some reason to believe, either from what was told you or from your knowledge of conditions, that, regardless of what you wanted, that was what you were going to get?

A. Exactly.

Q. Now, following that conference of December 12th, you wrote a letter to the Fleet Corporation stating what additional tonnage Bethlehem was prepared to undertake. Is that correct?

A. Yes.

Q. That is the letter which has been offered in

evidence as G-104, to which I call your attention. Am I correct that that is your letter?

A. Yes.

Q. In this letter you say, "Because of the unprecedent conditions surrounding the labor and material market, it is impracticable to estimate within a reasonable percentage what would be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels except upon a basis so far above estimated cost that any figure acceptable to this company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this company to be paid, in addition to the fee, one-half of any savings that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation."

Now the form of contract which you suggested in that letter is what is commonly referred to as the cost plus fee plus half-savings form of contract, isn't it?

A. It can be referred to in that way.

Q. Had you had experience with that form of contract in shipbuilding?

A. We had completed negotiations with the Navy Department for building a large number of Destroyers under that form of contract just prior to the date in question.

Q. Prior to that, under what form of contract had you been working with the Navy?

A. Immediately prior to that, that is between the time when War broke out and September, 1917,

we had been working on a cost plus ten per cent. profit contract.

Q. Straight cost plus?

A. Straight cost plus.

Q. And was that the result of a modification that had been made in contracts which were previously on a lump sum basis?

A. Partially. We took a contract for six Destroyers from the Navy Department in the early Fall of 1916 on a fixed price basis. When the War broke out the Navy Department naturally wanted us to use every endeavor to complete the ships as soon as possible and conditions had gotten very unstable and the Secretary of the Navy, at my request, changed the form of contract cost plus 10 per cent., so that the Navy Department would be perfectly free to order us to do what they pleased without bankrupting us on account of the fixed price on those contracts. Then they later awarded us two other lots of Destroyers until we had a total of 26 altogether at Fore River, and all of those boats were awarded on the straight cost plus basis. Also they gave us a contract for the armored cruiser, afterwards the Lexington on the same basis.

Q. What was your experience with other cost plus contracts, so far as the morale and the efficiency of plants were concerned?

A. I found that it was completely demoralizing; that the more a ship cost the more money the company made very rapidly permeated the whole organization and that it was extremely bad for discipline and management to attempt to work on that basis.

Q. Would that extend down even to the foremen in the plants?

A. Extended all the way down to the workmen in the plants.

Q. And was that a situation which was difficult to control?

A. Just could not be controlled.

Q. And what was the effect of that condition upon your cost?

A. It would increase the costs, very, very materially.

Q. How about the time of completion?

A. Well, it was bad in every way. It would have taken longer to do the work because nobody cared.

Q. Do you know whether Mr. Piez was familiar with this type of contract which I call the cost plus fee plus half-savings contract?

A. Yes, I know that he was.

Q. Do you know whether you ever discussed that form of contract with him prior to the proposal of December 13, addressed to the Fleet Corporation?

A. I cannot state definitely that I did, although I am sure that I did.

Q. Can you say whether Mr. Piez was in favor of that form of contract under the conditions which existed at that date?

A. Yes.

Q. Did that form of contract give you any control over the situation which disturbed you in the straight cost plus contract?

A. It certainly did.

Q. In what way?

A. As soon as we contracted on the basis of a fee, with a percentage of the saving, proper cost figured greatly in it, one that gave us a reasonable chance to make a saving, and there was exactly the same management to cheapen the work that there

had been on the fixed price basis; perhaps not to the same extent, but to a sufficient extent so that the point of view immediately changed and the management was working for itself and not with a view to making the most money by doing the least efficient work.

Q. When you refer to the management are you speaking of the executive officers of the company?

A. The executive officers and the foreman.

Q. How did it affect the foreman?

A. Just as it affected everybody else that came in contact with it. The foremen, if they are good foremen, have a pride in their position and in doing their work, and they realized that by saving money they were helping earn money for the company.

Q. Were they also helping earn money for themselves?

A. That had nothing to do with that particular form of contract, but the incentive method we established with this form of contract should immediately give them an incentive to do the work as quickly and as well and as cheaply as it could be done.

Q. And was that feature of this contract or was it not an important consideration with you?

A. Which feature?

Q. The feature that through this form of contract you would be able to get more efficient work out of your organization than under a straight cost plus contract?

A. It was much the most important feature of the contract to me.

Q. Now you say in this letter that it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction. I want to find out just what you meant by that. In normal times, I don't mean war times, but I mean in normal

times what would you say was a reasonable percentage of error in an estimate on, we will say a nine thousand or a ten thousand ton tanker?

A. I should say that a reasonable estimate was one that fell within a range of 5 per cent. above or below a mean.

Q. You are speaking now of normal times where estimates could be made in detail?

A. Yes.

Q. Based on a fairly fixed commodity market?

A. On a fairly fixed commodity market and a fairly fixed labor market.

Q. And also a settled labor condition?

A. Yes.

Q. And also settled transportation conditions?

A. Yes.

Q. Is that answer you have given us just picked out of the air or is it based on any actual experience you have had?

A. That is based on the experience of a great many years, and comparing results with estimates. Now there are a number of cases under normal conditions where actual results have been so far afield from the estimates that it is almost impossible afterwards to believe that the mistakes were possible. I will cite certain cases. In the building of the battleship Wyoming at the Cramps Shipyard in 1907, at a time when the yard was very slack, a most careful estimate was made, and a bid of about four and a half million dollars was submitted, which was supposed to be labor and the material and the yard operating expense that would go into the building of the ship. When she was finished they had cost just $1,700,000 more than the $4,500,000 for labor, material and the yard operating expense. The Momus and Antilles, passenger and cargo ships built

for the Southern Pacific Steamship Company, were contracted for a little before that with a contract price for about $2,500,000 and we expected them to yield a profit of about 10 per cent. Actually they showed a loss of about $400,000 on about a two and a half million contract.

Q. Were they Cramps too?

A. They were built at Cramps also. Also the Creole, a sister-ship to the Monus and Antilles, were built at the Fore River Shipbuilding Company.

Q. Was that while you were at the Fore River or at Cramps?

A. No, at the same time these other two ships were built at Cramps, and that showed a loss of almost as much as the Monus and Antilles at another yard by approximately the same contract price. The battleship Rividava, built for the Argentine Government at Fore River, the contract price is $10,000,000 and ought to have showed at least full cost to build the ship, but when the ship was finished it showed a cost of $13,700,000, a slight error of 37 per cent. or a little over.

Q. I suppose these are extreme cases?

A. Yes, they are extreme cases, but there are a good many others. I would just like to tell you of a case that happened just last Summer.

BY THE MASTER:

Q. Are there any the other way?

A. The chances of making a mistake the other way is always comparatively small. The best you can hope for is to build under your estimate 4 or 5 per cent. You cannot ever make a big mistake that is in your favor in this kind of contract.

Q. You are speaking now of fixed priced contracts?

A. In fixed priced contracts.

BY MR. BROWN:

Q. In a competitive market, I suppose?

A. In any market. You could not make an error that will throw you very far on the side that is favorable to you. You know about the amount of material that goes into the ship; you know about the price. You may gain a little bit in your purchases. You know somewhere near what the labor cost is. You may, through a good break coming in your favor, save a certain small amount, but a 5 per cent. saving is awfully good and a 10 per cent. saving is wonderful and I have seldom seen it.

BY MR. EVANS:

Q. You mean 5 or 10 per cent. under the estimate?

A. Under the estimate.

Q. Not under your contract?

A. No, the estimated cost. We took two ships at Fore River that were finished in 1914 or 1915, for the Atlantic & Pacific Steamship Company, that showed the biggest percentage of saving that I have run into in connection with an estimate. I think the saving there was 10 per cent. and Mr. Brown can check that, but that is about what it was, and that is the biggest that I have run into.

Q. When you say saving in your estimate that is regardless of your contract price?

A. Oh, yes, that had nothing to do with the contract price. I am comparing only in these cases cost with estimates.

Q. You were going to tell us about an experience that you had recently?

A. This last summer, when the material markets were extremely stable and when labor was in certainly as good control as ever could be, we had oc-

casion to estimate on a job that was going to run about $9,000,000 in the rebuilding of five ships and I was particularly anxious to get that contract and having two entirely different estimating forces I put them both to work on this job, each one, with no connection whatever with the other, thinking that by taking the two estimates I would be able to bid closer than if I had only one to go on. When the results were turned in the total estimates on the material in the two cases were very close together. The two estimates for the labor varied by practically 30 per cent. We then took the labor estimate and compared it item by item, group by group, in accordance with our cost system. We took each man's estimate, and if he was lower than the other one we put his estimate for that group in one column and if he was higher we put it in another column. We then added up all the lows and all the highs and there was a difference of 50 per cent. in the two estimates. In other words, if one estimator had happened to choose a low spot on every one of the groups and the other man the high side, their labor costs, instead of being 30 per cent. higher, would have been 50 per cent. higher. I was then curious to see whether this total material estimate was merely an accident or whether they really were close. We did the same thing with the material and we had a variation between all of the lows and all of the highs of 20 per cent., and in some particular groups a variation of 300 or 400 per cent. Now I am simply citing this to show, that as a result of many years experience, no one can make me believe that estimating the cost of ships is an exact science. If you come out anywhere near you think you ought to, it is as much a matter of good luck

as good management, after you have taken the best precautions you know how to get results.

Q. You have told us of your experience with estimates in normal times. Tell us what were the difficulties in making up an estimate in December of 1917?

A. In December of 1917 the difficulties that were beyond those ordinarily incident to making this kind of an estimate were that there was no single stable item in the various elements that went to make up your cost. You could not figure the unit price of your labor. You could not figure the efficiency of your labor. You could not figure the efficiency of your manager. You could not figure the unit cost of your material. You could not figure the cost of your transportation. You could not figure the delays that were incident to getting the material assembled, which is an essential before you can begin the orderly construction of a ship, or the service of the material which is essential to contin ing its orderly construction. You could not figur the value of the spoiled material which is always a factor, in a time of that sort and very vital factor in the total cost of the finished product. So that in December, 1917, there was literally no element in the cost which you could be sure was going to come out where you thought it was when you tried to make the estimate.

Q. Well those conditions were exactly the same, I take it, in November?

A. In November, yes, November and December.

Q. You did have prices fixed on some stable materials, such as plates and shapes and steel products generally?

A. Temporarily, yes, but subject to change at the will of the War Industry Board, and for any material.

undelivered when they changed the price, your prices went up. They never went down. They went up to the new price that was set.

Q. In point of fact, did the prices on plates and shapes go up during the period?

A. I don't remember. As I recollect it they did not vary very much after the war industry board took hold of it.

Q. But in December of 1917, that was a contingency you had to contemplate as a possibility?

A. That was a contingency which faced us.

Q. You did have protection against increase in wage rates from the Government?

A. They were included in our contracts, yes.

Q. So why was the question of labor cost something that you could not estimate with reasonable accuracy?

A. Because of the efficiency of labor, which was even more important than the question of wages, was an entirely unknown quantity.

Q. Tell us something about the expansion of your forces?

A. The Bethlehem Shipbuilding Corporation, Limited, at the time of its formation on October 1st—well, I really am not very clear on these figures, but we worked it out at Fore River where I can give you the figures more accurately because I was closer to that yard. We worked up eventually at the end of 1919 to about 14,000 in the Fore River plant and about 8,000 at Squantum. My recollection is that on January 1st, 1918, we had about 8,000 men at Fore River, and I think I have those figures that I can check up if you would like to have them. For the entire Bethlehem Shipbuilding Corporation we worked up to a maximum of 70,000 men, and I

think on January 1st, 1918, we had perhaps 15,000 or 16,000 men altogether in our employ.

Q. Using your Fore River plant as a criterion, because you are more familiar with that, the 8,000 men that you had in January, that does represent some expansion in your forces over a long time?

A. Yes, that was double. What we call a normal force was between four and five thousand men.

Q. So, by January 1st, you had practically doubled your normal force?

A. Well, that was over a period of several years though.

Q. Was it over a period of several years?. Didn't that really come in 1917?

A. Well, we had expanded somewhat in 1916. I can give you the figures accurately. On February 1st, this is taken from the testimony given before the Committee of Commerce of the Senate on February 1st, 1918. We have 35,000 men on the payrolls the week before and we were increasing at the rate of about 3,000 men every four weeks, that is about 3,000 men a month.

Q. That figure refers to all Bethlehem's yards, does it?

A. That figure refers to Bethlehem's Shipbuilding Corporation.

Q. Can you give us the maximum that you worked up to?

A. We worked up to 70,000 maximum in the Bethlehem Shipbuilding Yard. That was in 1919.

Q. What type of men were you getting to expand your forces?

A. Every conceivable type excepting trained shipbuilders. Shoemakers, doctors, merchants, cloth weavers, almost anybody who happened along and wanted a job at good wages.

Q. And who wanted to dodge the draft?

A. Or who wanted to dodge the draft.

Q. Were you losing any of your old men?

A. Yes, as the new yards sprung up and their activities increased they were continually poaching on the old yards for their experienced men and that was a particularly serious matter as it affected our supervising forces. New yards would come along and hire the leading man and make him a foreman or assistant superintendent or even a superintendent, at several times the wages we were paying him, and just about as fast as we got men that were good for anything somebody came along and took them away from us.

Q. You said something about spoiled material. Has that got anything to do with the type of workmen you had?

A. Well, it had a great deal to do with it. In ordinary times with skilled forces your percentage of spoiled material will be extremely small. With green workmen and poor supervision your percentage of spoiled material would be very large.

Q. Large in substantial factor or element in the cost of a ship?

A. Yes, large enough to be a very substantial factor. I may cite the Cabrille, built at the Harlan plant, where, after the Armistice, and a change of inspectors and a more rigid set of requirements resulted in costing us a great many thousands of dollars for material which had been passed and which was determined which was not good enough when the war was over and we had to cut out and replace.

Q. Taking into consideration those factors of uncertainty about which you have told us, and any others which existed about which you have not par-

ticularly told us, what would you say about the accuracy with which a man, a competent and an honest man; might estimate the cost of ships to be laid down sometime in 1918?

A. There was no such thing as an accurate estimate for a ship under the conditions as they existed at that time.

BY THE MASTER:

Q. Was there at that time the other elements that were in Mr. Evans's question, an honest effort to make that estimate? Mr. Evans had two characteristics of his estimator, an honest and a capable estimator. You say that no one was capable of estimating at that time and I am asking you whether it was possible to make an honest effort to reach a fair result?

A. Certainly you can always make an honest effort to reach any results but the point that I would like to make there is that given an honest and a capable estimator, set to work to make an estimate for a given type of ship at that time, if he assumed that that ship would be built under one series of conditions which might have existed over the period of the contract, he might have reached one figure. Another equally competent and equally honest estimator, estimating another series of conditions, might have reached another figure so far from the first one that they would not have looked like the same thing. I cited in my previous testimony, and, in accordance with the best of my judgment, this is about correct, that given, we will say, a mean that might be reached by 20 men equally competent and equally honest working out a cost on that date, that one of these men might have been 25 per cent. below that mean and another 50 per cent. above. In other words there was a range of 75 per cent. over

a given mean that could be justified by equally honest and equally competent men, merely by the conditions which they assumed as the ones that would govern the cost during the period of construction of the vessel they were figuring on.

Q. Those conditions were conditions in which the element that they varied upon was the element of judgment and not fact?

A. Well, not even of judgment, because nobody could tell at that time whether the war was going to last, nobody could tell whether the draft was going to be more stringent and men we counted on were going to be taken out of the yard, nobody could tell whether the railroad system was going to break down completely, and it was very nearly busted at one time, and whether or service would be completely gone, and no one could tell whether the requirements of the Army at the front were going to be given entirely precedent over our needs in building it, that we could not get the material we required and no one could tell whether the expansion of yards would continue to take our supervisory forces. There was so many elements that you could guess on one way and I guess on another, but they were nothing but guesses and the net result was that it was just nothing but a rank guess.

BY MR. EVANS:

Q. But still, for the purposes of the form of contract which you wanted to use, the one you were using in the case of the Navy Destroyers, it was necessary to have something that represented a base cost or an agreed upon estimated cost, was it not?

A. Yes.

Q. It is your statement that a number of estimators competent and honest, attempting to arrive at what would be a proper figure to represent the

base or estimated cost for use in such a contract, might vary as much as 75 per cent.?

A. 25 per cent. below and 50 per cent. above the mean, yes.

Q. You mean that while it is not likely that the actual cost would under run a competent and honest estimate by more than 25 per cent. that there was comparatively no limit to the percentage the actual cost might over run such estimate?

A. Yes, that is exactly what I mean to say. I would like to give just one illustration in 1916 when we took a contract for a small oil tanker for the Argentine Government at the Fore River yard, and it so happened we happened to get what we felt was a very extravagant price and we thought we were going to get back some of the money that they took away from us when we built the Rividava, and when that ship was finished they had $25,000 more of our money and we had lost all this lovely profit we thought we had and $25,000 besides. That is simply an example of how costs run against you when things get going wrong.

BY THE MASTER:

Q. I am not quite sure I understand the effect of Mr. Powell's testimony, but, as I hear it, it is to the effect that the average arrived at on a reasonably fair exercise of judgment based on such facts as would be available would produce a figure which is not likely to be one that could be saved on in the course of construction.

A. Under normal conditions?

Q. Under normal conditions.

A. Yes, that is absolutely correct, that is to any very great extent.

BY MR. EVANS:

Q. Following the submission of the letter of De-

cember 13th, did you have a conference with representatives of the Fleet Corporation regarding it?

A. Yes, I had several conferences with the Emergency Fleet Corporation.

Q. On what dates?

A. On Thursday, the 13th, I read from my diary. "Wrote letter about what we could handle additional work and handed it to Radford about noon. Saw Bowles in afternoon about commandeered ship with Brown. Then Brown, Bowles and Harris had a further conference. Bowles was nasty. Saw about completing Drydock. Got our letter under way and took up oil ship at Moore's and cancellation of Savannah boats at Harlan's. At hotel. Got up stock ship letter and miscellaneous correspondence."

On the next day, Friday the 14th, "Letter about stock ships. Wood appeared. Signed letter about Drydock and got off letter. Handed in to Radford at noon and in P. M. Brown, Bowles and Radford had conference. Brown, Bowles in long row over stock ship. Bowles arbitrary and nasty. I saw Hurley and told him all our proposals were in and it was up to him." The next conference I had in Washington was Tuesday, December 18th.

Q. Read what your diary says about that.

A. "Arrived about 11 at Willard, Mr. Brown. Called at the department. (That was the Navy Department.) Saw Piez and Radford and saw Bowles about program. Bowles wants to load us with tankers and troop ships and ignores all arguments. At Willard's. Wrote up proposal on lines of Bowles program which is very bad for our yards."

Q. Is the proposition to which your diary refers the proposition which is contained in your letter

addressed to the Fleet Corporation of December 19, 1917, which has been offered in evidence as G-109?

A. Yes.

Q. So that I take it that at the conference that you had on the afternoon of December 18th that the particular types and sizes of vessels that you were to be asked to build had been determined upon?

A. Yes.

Q. And you were instructed to submit your proposals as to prices?

A. Yes.

Q. Was there anything said as to how quickly you were expected to submit your proposals?

A. Oh, yes, they wanted us to get them in immediately.

(Adjourned to 10 o'clock a. m., April 3, 1931.)

J. W. POWELL, direct examination resumed

BY MR. EVANS:

Q. In the testimony which you gave before Mr. Roberts, you stated that in June of 1917 Bethlehem employed, in all of its yards, about 12,000 men, and that during the war emergency, when you reached the peak, that had been increased to about 70,000; is that correct?

A. That is correct.

Q. You told us in your testimony yesterday that you had discussed with Mr. Piez, at some time prior to the submission of your letter of December 13th, the so-called half savings form of contract, and that he was familiar with it and approved of the use of

such form of contract under the conditions then prevailing. Do you recall that testimony?

A. Yes.

Q. Now I direct your attention to a memorandum addressed by Mr. Piez, as vice-president and general manager, to the Board of Trustees of the Shipping Board under date of October 9, 1918, which appears at page 494 of the printed documents and which was offered in evidence the last time as Exhibit B-6, and I direct your attention to the statement which appears on page 495 of that letter, which I am going to read to you. Mr. Piez states in this memorandum to the Trustees of the Shipping Board: "In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are the probabilities are that the contractor will lose interest in keeping the costs down as soon as it finds that the ship will cost more than the estimated basis cost. We discussed this matter with the Board at the time the commitments were made last spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent." Now does that statement which Mr. Piez made as to the method of operation of such a contract, accord with your views?

A. Exactly.

Q. I think when we adjourned last evening that you had told us the circumstances under which you submitted your proposal of December 13th. Did you discuss that proposal with Mr. Piez at any time prior to the meeting which you had with Admiral Bowles and Mr. Radford on January 3rd?

A. Yes, I saw Mr. Piez several times in the inter-

val and discussed that proposal and our letter of December 19th, submitting the definite proposal, with him.

Q. I think I asked you yesterday about the conference which you had with representatives of the Fleet Corporation on December 18, 1917, did I not? I have not the notes of testimony.

A. Yes, I think I read the record from my diary of the 18th into the record and that that was where we stopped last night.

Q. And following that meeting you and Brown got together and made up some figures, which formed the basis of your proposal which is contained in your letter of December 19th?

A. That is correct. That night we drafted a letter containing the general proposal and the next day I dictated the letter at the Harlan plant in Wilmington, where it was written.

Q. Had you at any time previously said anything to Mr. Brown about preparing cost data, or whatever would be required in order to enable you to submit estimates when the time came?

A. I cannot recall that I ever definitely gave Mr. Brown any such instructions. We were in communication, we spent a great deal of time together, and we discussed everything that was going on. Mr. Brown was fully conversant with the fact that we were going to have to submit proposals to the Fleet Corporation. He knew my fixed intention to only contract with them on the basis that had been accepted by the Navy Department, and he knew that when the time came for fixing the figures that went in, I would look to him to have the data.

Q. You and Brown sat down on the evening of December 18th and went over figures?

A. Yes.

Q. Can you tell us what you used as a starting point?

A. Yes. Mr. Brown did not have with him the detailed records that he had prepared, but he had in his mind certain cost figures that permitted him to sit down and reconstruct—

MR. BROWN: Just a moment, Mr. Powell. I want to give you every latitude, but I do not think you should go into what Mr. Brown had in his mind and I would like you to confine yourself to what Mr. Brown actually did.

THE WITNESS: Mr. Brown reconstructed the curve, using two points that he could plot from his knowledge of what he had previously done, or which he stated that he did from his recollection of what he had previously done.

BY MR. EVANS:

Q. What is your recollection of what he actually did?

A. He actually took a piece of scratch paper. He laid it out with abscissae of tons and ordinates of dollars, and laid out this curve from the two points which he stated he recollected from the other curve.

Q. Do you recall what those two points were?

A. One of them was a 10,000-ton tanker. I do not recall what the other one was at this time.

Q. Do you or do you not recall definitely that one of them was the cost of a 10,000-ton tanker?

A. After this lapse of years, I would not want to say that it might not have been some other type of ship, but at any rate it was two points that permitted him to locate this curve.

Q. Your letter says: "The figures quoted above

for the smaller tank vessels are based upon those given for a 10,000-ton vessel." Does that refresh your recollection as to what size and type of vessel you used to build up your estimate?

A. No, I cannot say that it does.

Q. It does not?.

A. No.

Q. Do you recall what Mr. Brown's figure was for a 10,000-ton tanker to be built on the East Coast?

A. No, I do not.

Q. You do not?

A. No.

Q. His testimony was that his figure was $2,000,000, or we will put it in terms of dead weight tonnage; his figure was $200 per dead weight ton for an East Coast tanker of 10,000 tons and $210 for a West Coast tanker of 10,000 tons, and that he struck an average between the East Coast and the West Coast figures by taking five West Coast and three East Coast and that gave him an average cost for East and West Coast of $206. Do you recall that, or have you no recollection of it?

A. No, I have no recollection of the exact figures.

Q. I observe that when you came to submit your breakdown of costs which appears in your letter of December 19th, your average figure for a 10,000-ton tanker is just about $10 a ton more than the figure which Mr. Brown says that he had derived?

A. Yes.

Q. Can you explain the difference?

A. Yes. I raised those figures for two reasons: first, because there was an item of increased cost of steel, which represented a contract for very high-priced steel that we had to use in connection with this program, and which amounted to about $2.50

a ton spread over the program that we expected to undertake. That was a very rough figure. Whatever else I put on I put on because I knew I was going to have to trade the final contract out with Admiral Bowles and I knew I would not get what I asked for, and if I did not ask for more than I expected I would not get out where I wanted to be.

Q. The figure of extra steel; is that the same item which appears in your breakdown as "Extra Cost of Steel, as per page 6 letter of December 13 averaged over all extra tonnage, $2.50"?

A. Yes.

Q. So, then, your $10, as I understand it, was made up of $2.50 to cover high-priced steel, and in round figures another $7.50 which you say was put in for trading purposes?

A. Yes.

Q. Did you, even with that addition of $10, or $7.50 a ton, whichever way you want to look at it—did you consider that the figure which you submitted of $216 a ton was within the reasonable range of the probable cost of those ships?

A. Yes.

Q. If you will refer to your letter of December 19th, you will find that your quotation was based on the total cost of the several types of vessels, and then you follow that by a breakdown of the cost per dead weight ton of a 10,000-ton tanker. I want to ask you whether the total cost was built up from the breakdown or whether the breakdown was made from the total cost?

A. The breakdown was made from the total cost.

Q. Is it an arbitrary breakdown, or is it based on some figures that you had?

A. It was an absolutely arbitrary breakdown.

Q. I noticed that in making that breakdown you allocated to A. S. and G. exactly ten per cent. of the labor, materials and operating expense. What was the basis for that, if you can tell us?

A. That was a figure that we had used for years in our estimates. It was a round figure that might be correct and might be quite incorrect, depending upon the volume of work that was being done. Many of those charges are fixed charges that do not vary with the volume of work; therefore, as the volume goes down the actual percentage of A. S. and G. goes up, and vice versa. But it was a figure we always used, and for the purpose of that breakdown we continued to use it.

Q. Of course, if you were breaking down a total cost figure and had used some other percentage, say five per cent. instead of ten, to represent your A. S. and G., then some other figure would have to go up?

A. Correct.

Q. So it is more or less of an arbitrary division?

A. It is an arbitrary division.

Q. Intended for what purpose?

A. Well, primarily, I should say, after this lapse of years, intended to give the Fleet Corporation some notion of a general split-up of the figure. That is the only thing I can say at this time. Probably they had asked us to give them some breakdown and we put it in for that reason.

Q. Did you have any conferences with Admiral Bowles or Mr. Radford regarding that proposal of December 19th until your meeting of January 3rd?

A. I think not. It was never discussed seriously until January 3rd with Admiral Bowles or with Mr. Radford.

Q. You did, however, have some talk with Mr. Piez regarding that proposal?

A. I did, on the 21st of December.

Q. Now I direct your attention to a letter which you wrote to Mr. Piez under the date of January 3, 1918, which appears at page 256 of the printed documents, being the letter which was offered at the last hearing as Government's Exhibit G-116, and I call your attention to a statement which appears at page 257, in which you said—this letter is addressed to Mr. Piez—"We further refer to my conference with the vice-president and general manager of the Emergency Fleet Corporation on Friday, the 21st ultimo. This will confirm the statement then made, that while this company cannot undertake any capital expenditures at its expense, if the terms of our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice-president and general manager, and strongly urge that there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements of additional merchant vessels." Does that reference in your letter refer to the discussion that you had with Mr. Piez regarding the proposal of December 19th?

A. Yes.

Q. Does your diary make any reference to it?

A. Yes.

Q. Will you refer to that, please?

A. On Thursday, the 20th, my diary states, "Saw Piez and gave him letter on program." That was a copy of the letter of the 19th. On Friday, December

21st, my diary states, "Saw Piez, gave him letter justifying price on ships at Maryland Steel and Union and draft of letter to us awarding program and put matter up to him." That is the only reference in the diary to seeing Mr. Piez.

Q. The entry in your diary refers to a draft of a letter "to us." Is that a typographical error?

A. That is a typographical error.

Q. It should have been "letter from us," should it not?

A. From us, but just what letter that refers to, unless I had drafted the letter that I afterwards handed in on January 3, I am not clear.

Q. At that time the contracts had not been awarded?

A. There had been no detail conferences on the contracts.

THE MASTER: Does not that require another explanation, Mr. Evans? Even with the change made it is not quite accurate, is it, to express what the witness now says it was intended to mean? Would you mind reading that entry as you suggest the change?

BY MR. EVANS:

Q. Mr. Powell, will you read the entry making such correction as you think is proper?

A. The only way I would correct it would be to leave out any reference to that draft of the letter, because I cannot at this time state definitely what that draft was.

Q. Have you a definite recollection of the conversation that you had with Mr. Piez on that date regarding your proposal of December 19th?

A. Yes, I have a very definite recollection. The afternoon before, that is, on December 20th, I met

Naval Constructor Louis McBride, of the Navy, and Mr. Charles Day, of the firm of Day & Zimmermann. They had just been abroad with one of the various commissions that the Government was sending over at that time, and they said they wanted to see me. They had dinner with me that night, and, as they had had access to all of the British Admiralty figures on submarine sinking, they told me for the first time what was really going on on the other side and how enormously greater the sinking of merchant ships had been than any of us who were not very much on the inside understood, and they asked me to charge myself with the duty of trying to circulate this news among the other shipbuilders and bring home to them the fact that there was a great deal more involved in the program of shipbuilding than just trying to make a few dollars. They were extremely earnest about this and they made a very deep impression on me, and I spent a good deal of time that night thinking about it and made up my mind that, so far as the Bethlehem program was concerned, we were not going to be the ones that were responsible for any hold-up. I felt that because of my personal relations with Admiral Bowles it was going to be very difficult for me to negotiate a contract, and that, unless pressure were put on our negotiations or unless somebody else took them in hand, there might be a very serious delay. So I went to Mr. Piez the next day and I made to him orally at that time the proposition which I afterwards repeated in my letter. I told him that we could not take fixed price contracts, but that outside of that, if he would fix any fee or any base price and any percentage of savings that he thought was fair, that if he would do that on his own study and on his own judgment,

Bethlehem would accept the contracts and would carry them out under those terms.

Q. What was his reply to that suggestion?

A. His reply was that he wanted me to negotiate with Bowles and then he would arrange for an early conference.

Q. And as the result of that you did have a conference with Bowles that afternoon?

A. No, this was on the afternoon of December 21st.

Q. Oh, yes, that was on the 21st.

A. I returned on the 2nd of January and on the 3rd I took him the letter, handed it to him, and he then said "I will arrange a conference this afternoon."

Q. Was Mr. Piez a close personal friend of yours?

A. Not at that time. I had known Mr. Piez for a great many years, having met him in Philadelphia probably in 1910 or 1912, somewhere about that time. I happened to know a great deal about him, because Mr. J. M. Dodge, the chairman of the Link-Belt, was a close personal friend of mine and he talked a great deal about Mr. Piez, who was the president of his company, and of whom he was very fond. Through my knowledge of Mr. Piez, I was prepared to find him just the kind of a man that he turned out to be in all of my personal associations with him, a very high-minded, able and courageous man, and after I had met him and talked to him for the half dozen times or more that preceded the conference of December 21st, I was perfectly willing to leave our case in his hands, with the assurance that we would get as near substantial justice as he could deal out.

Q. But that was not because of any close personal

friendship that existed between you, but because by reports and by such observation as you had been able to make during your brief association with him, you considered that he was a man who would see that you were dealt fairly with?

A. That is correct.

Q. I call your attention to the letter which you wrote to the Shipping Board on March 7, 1918, in connection with one of the later contracts, this letter appearing at page 337 of the Documentary Evidence and being the letter which was offered in evidence before by the Government as G-126. At page 338 you state: "However, because of its full appreciation of the nation's desperate need of ships, it desires to repeat the offer made orally and in writing in December and January last, that it will accept the order to construct these additional vessels at such lower base price and such smaller fee as may be personally determined by Mr. Charles Piez, vice-president and general manager, with the proviso in the present instance that the contracts will otherwise be duplicates of those for new construction already signed by Bethlehem Shipbuilding Corporation, Ltd., and the Emergency Fleet Corporation." Is that reference to the offer which you made in December? Does that refer to the meeting which you had with Mr. Piez on December 21st, which you just told us about?

A. Yes.

Q. And the reference to the January offer, I suppose, is to your letter of January 3rd?

A. Yes.

Q. How was this letter of January 3rd delivered to Mr. Piez?

A. I handed it to him personally.

Q. Was that before the conference that you had with Admiral Bowles?

A. Yes, that was in the morning.

Q. Did Mr. Piez make any statement at that time?

A. I do not remember his making any statement beyond saying that he was going to arrange a conference for that afternoon, which he did. As a matter of fact, I think we walked together in to Admiral Bowles and he said that he wanted him to meet us, and Admiral Bowles arranged that the conference would begin at two o'clock.

Q. In your letter of December 13th, in which you suggested the half savings form of contract, you said—I am reading now from page 202—"The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after payment of all War and Excess Profit Taxes as to-day existing, of ten per cent. of the present estimated cost of construction," and again in your letter of December 19th you referred to your letter of December 13th for a statement of the basis of contract under which you proposed to construct the vessels which were covered by your proposal of December 19th. Now I want to ask you whether, in making up your figures which became the subject of your proposal of December 19th, you included any item to take care of War and Excess Profit Taxes?

A. No.

Q. Did you have any information as to what War and Excess Profits Taxes were at that time?

A. Yes, in a general way I knew that the maximum bracket was around 60 per cent., and that the volume of business that Bethlehem was doing would throw any profits that we made on these contracts, in

all probability, into that high bracket, and of course nobody could tell how much more the war profits might be later, but that was just one of the uncertainties that went with the times.

Q. But did you attempt to figure out what your War and Excess Profits Taxes might be under these contracts on the basis of the figures that you were submitting?

A. No.

Q. Is there hidden anywhere in these figures which appear in your letter of December 19th, any item which was intended to take care of War and Excess Profits Taxes?

A. There is nothing hidden in that estimate. I have told you the reason for putting on roughly $10 a ton to the base figures. Underneath that the estimate was supposed to be a reasonable figure of probable cost, that gave us a chance, if things broke our way and if we did our job well, to make a reasonable saving, half of which would accrue to Bethlehem. I have stated before, and I would like to state again, that that estimate, in my judgment then as now, represents an average figure that we might have gone 50 per cent. under, if a competent estimator had based his figures on a different set of circumstances—

Q. Do you mean 50 per cent. under?

A. 25 per cent. under and might have gone 50 per cent. over, if he had assumed another set of circumstances.

Q. Can you explain to us where you hoped, out of those figures, to get enough savings to take care of your excess profits taxes, and how you hoped to be able to do it?

A. I hoped—and it was, of course, based entire-

ly on hope—that we would be able to increase our efficiency of management, our efficiency of labor, that we would find ways to increase our efficiency of service of material, and that, by exercising the best efforts that we had in us—and when I say us, I mean myself and the management and extending down to the workmen—that we would be able to do much better than the reasonable probabilities at that time would lead us to suppose.

Q. Take as an illustration the condition that then existed in your Harlan plant. Can you give us some idea what that was?

A. The conditions existing in the Harlan plant in Wilmington were much the worst of any in our case. Wilmington was located in the center of the Philadelphia district, which had become the great shipbuilding center of the United States. Hog Island had started up in Philadelphia, the Merchant Shipbuilding Company in Bristol, Pusey & Jones had built, or were building, a yard in Gloucester, the New York Shipbuilding Company had doubled the size of their plant, and the net result had been that the demands for labor in this district had so far exceeded the supply that labor was completely out of hand. If a man did not like his job in one place, or found he could get a little better terms somewhere else, or if he did not like his foreman or something his foreman said to him, he just walked off one job and on to another. The net result was there was no discipline in the yards, unionism was rampant, and the situation with regard to labor was the worst that I have ever had to deal with in my shipbuilding experience, far the worst.

Q. And I suppose that naturally reflected itself in your costs?

A. That reflected itself very radically in our costs.

Q. Was that one of your problems, to improve labor conditions at Harlan?

A. That was one of our vital problems.

Q. And if you had failed to do that, and if conditions such as existed at Harlan had spread to your other plants, is it likely that you would have made any profit under your half savings clause?

A. In my judgment, if the conditions that obtained at the Harlan plant at that time had spread to the other plants, we would not only not have made a nickel, but we would have very considerably exceeded the base prices that we submitted.

Q. Did you, in point of fact, get conditions at the Harlan plant in hand eventually?

A. We got them in hand. They never were good and never compared with the conditions in the other yards until after the war was over.

Q. But you were able to improve them?

A. We did improve them materially.

Q. What about the conditions in the other plants?

A. Sparrows Point was always a difficult proposition. It was so located that the transportation and housing problems were very difficult. Baltimore had become a great manufacturing district for all sorts of war materials, so that the supply of labor in Baltimore for all purposes was inadequate. We only were able to build up the Sparrows Point force at a much lower rate than we wanted to, and our conditions there were much less satisfactory than in the two largest plants, at Fore River and at Union.

Q. Then I take it that one of your great problems, as the driving force of this organization, was

to improve your labor conditions, or first to prevent labor conditions from getting worse and then to try to improve them?

A. Yes.

Q. Over what they were in December of 1917?

A. Yes.

Q. And if you were able to do that, then there was a possibility of some profit in these contracts under the half savings clause?

A. Yes.

Q. Was there any likelihood, or did you at that time foresee any likelihood, of any substantial saving in your material items?

A. No, I should not have expected at that time to make any saving of any amount in the materials.

Q. So that, if Bethlehem was to make any money out of these contracts in excess of the fixed fee, it was your judgment that the only way to do it was by increasing the efficiency of the yards?

A. Exactly.

Q. And that was your job?

A. Yes.

Q. And that was the task to which you set yourself?

A. Yes.

Q. And of course that was one of the purposes of this half savings contract, to give you an incentive to do that very thing?

A. That was the primary purpose of that form of contract.

Q. Not only to give you the incentive, but to enable you to pass that incentive down to the foremen in the plants and the bosses on the ships?

A. Yes.

Q. And in that were you reasonably successful?

A. I believe we were very successful, under the conditions.

Q. Were you assisted in any way by the early termination of the war?

A. Undoubtedly.

Q. It is a matter of general knowledge, I think, that at that time nobody could forecast, or attempt to forecast, the termination of the war?

A. In December, 1917?

Q. In December, 1917.

A. No one attempted to forecast it that I know of.

Q. In point of fact, did your labor conditions materially improve after the Armistice?

A. Yes, they did.

Q. And would you say that that was a material element in the savings that you have been able to effect over this whole contract program?

A. Undoubtedly.

MR. BROWN: I think you want to be specific about the date, so that we have Mr. Powell's statement definite, for what it is worth. Of course it improved after the Armistice, but did you not intend to direct the question as to when?

BY MR. EVANS:

Q. How soon after the Armistice did labor conditions begin to improve?

A. Well, almost immediately, almost immediately. They were better at the time of the Armistice, considerably better than they had been when we signed these contracts, but they improved more rapidly after the Armistice.

Q. They were better at the time of the Armistice than they were in December of 1917?

A. Yes.

Q. But they were better, we will say in April, May and June, 1918, than they were in December, 1917?

A. I think they had begun to improve at that time.

Q. Had begun to improve?

A. Yes; my feeling is that at the time we signed these contracts we were about at the low ebb of our efficiency, in the winter of 1917.

Q. Is that feeling based on any facts?

A. No, that is based on pure judgment only.

Q. Not on any study that you have given, any critical study?

A. Not on any facts that I could quote.

Q. Now you have made some reference to relations between you and Admiral Bowles. You said you thought it was going to be a difficult matter for you and Admiral Bowles to negotiate a contract. I do not want to go into any personal differences that existed between you and the Admiral and the reasons for them or the merits on one side or the other, but let me ask you whether it is a fact that for some years you had been associated with Admiral Bowles as his subordinate?

A. For about a year and a half.

Q. And you had been a great admirer of Admiral Bowles, had you not?

A. Yes.

Q. And you never lost your admiration for his ability as a constructor, did you?

A. Never.

Q. The difference that occurred between you was

a personal matter which arose when you were associated with Cramps and he was president of Fore River; is that right?

A. Yes—not a personal matter, it was a business matter.

Q. A matter of competition?

A. A matter of competitive business.

Q. And that feeling was accentuated by reason of the fact that you superseded him as president of the Fore River Shipbuilding Company?

A. Yes.

Q. So that the relations between you were, to say the least, strained?

A. Yes.

Q. And while you had confidence in Admiral Bowles' ability, and I suppose he had confidence in your ability, did he not?

A. I cannot answer for that.

Q. At least you can answer for this, that he had no confidence in your integrity and you had no confidence in his integrity; is that right?

A. I can answer the last part, I did not.

Q. So that when you came to negotiate, it was not in a confidential relation, but it was rather at arm's length?

A. It was certainly at arm's length.

Q. I forgot to ask you how you made up your estimates on the tugs, which estimates are included in your letter of December 19th.

A. When Mr. Brown and I sat down on the night of the 18th to get together these figures, he had made no study of the probable cost of these tugs, and when we came to submit a figure for that item of the program we talked over what we knew to have been the cost of some tugs built seven years earlier

at Cramps and at Fore River. These tugs were about 110 feet long and had 1000 horsepower, and the tugs that we were to submit figures on were 150 feet long and had about 600 or 800 horsepower, I forget which. We decided that as the tugs that we had built in 1910 we had gotten $110,000 for, and as both Cramps and Fore River had lost money on them, about $300,000 was about a bare base cost for those tugs and about $30,000 a fair fee, and that is the way we made up our figure, and that is all the estimating that was ever done on those tugs, and I think we probably thought about it for fifteen minutes, and I also think that at that time there were no plans and specifications for the tugs, at least we did not have them.

Q. You were estimating on the tugs simply on the basis of the overall length and the horsepower?

A. Yes, and our knowledge of what sum big tugs built seven or eight years before had cost.

Q. Do you consider that that method of arriving at an estimate was about as close as you could come, having as little information as had been furnished you?

A. I think it was probably as well as we would have done if we had had all the information and all the time in the world, under the conditions.

Q. I suppose that in the shipbuilding business, as in the construction business generally, a man, after years of experience, knowing the costs of certain base materials and labor rates, can estimate the cost of a vessel at so much a ton and arrive at a pretty accurate result, assuming that business conditions are stable?

A. Yes, I should say that a man can arrive at a fairly accurate result if he has a similar ship on

which to base his judgment. Generally speaking, under normal conditions, you want a detailed estimate to consider, and then on top of that detailed estimate the shipbuilder of experience will know what he has got to either add or subtract, to reach what in his judgment will be the most probable cost figures, and he can go pretty badly astray under any conditions.

Q. What I had in mind was this: if I today wanted to build an office building, I could go to an architect who had had experience in the building of office buildings, and give him a building of a certain type, steel construction, we will say, and a certain facing, whether it be brick or limestone or whatever it is, and he, by his experience and with his knowledge of material and labor, can tell me that the building will cost forty cents a cubic foot, or fifty cents a cubic foot, and that will be a reasonably close figure. Now does the same thing hold true in shipbuilding?

A. Well, in the first place, I do not entirely agree with your premises, because I have seen too many widely varying bids on the part of contractors on the same design of office building to think that the figures that the architect gives you are apt to be very close, for you often see variations of ten or twenty per cent. from the figures the architect gives you in the building of an ordinary building.

Q. I do not mean that, Mr. Powell, that they would be very close or that they would take the place in normal times of a detailed estimate, but it is my impression that that is a very common practice among architects, to make a rough estimate.

A. Oh, yes.

Q. Of the cost of a building, based on the cost per cubic foot.

A. That is a common practice among shipbuilders.

Q. That is what I asked. Is that analogous to the practice among shipbuilders of figuring a cost of so much per dead weight ton?

A. A shipowner will say to a shipbuilder, "I think perhaps I would like to build a ship for the trade between, let us say, New York and Havana, and she ought to be about so long and she ought to be so fast and she ought to carry about so many passengers and so much cargo. Now before I can proceed with my studies as to whether I want that ship or not, tell me approximately what she will cost." From the records, with a very small amount of estimating, you can give an approximate figure that lets him make up his mind whether he wants to go ahead or not, and after that the question of detailed plans and estimates and final contract figures can be considered.

Q. Now I want you to tell us your recollection of what occurred at the meeting on January 3rd with Admiral Bowles and Mr. Radford and any other representatives of the Fleet Corporation who may have taken part in that meeting. Tell us first what your recollection is to who were present.

A. My recollection is that Admiral Bowles, Mr. Cuthell, who was chief counsel for the Emergency Fleet Corporation, Mr. Radford, Mr. Brown and myself were present throughout the negotiations, which began around two o'clock and lasted until seven that night. During the time we were in Admiral Bowles' office, where they took place, my recollection is that Mr. Piez was in and out once

or twice, that Mr. Coxe was in and out, that probably Mr. Underwood was called in, and there were a number of people in and out at different times in that afternoon.

Q. At that conference did you come to a verbal agreement with Admiral Bowles and Mr. Radford as to the prices of the vessels which had been included in your proposal of December 19th?

A. Yes, we finally reached an agreement.

Q. Between December 19th, or December 18th, when you had made up your proposal, and January 3rd, when you had your meeting, had you fortified yourself with any figures which you got from Bethlehem or got from Brown?

A. Yes, Mr. Brown had taken off the exact figures—

MR. BROWN: Mr. Powell, won't you confine it to what you did personally? I understand the object of the question and I would like you to confine your answer to what you did personally, and I ask to have the other answer stricken out, as to what Mr. Brown did, unless you know definitely just exactly what he did do.

THE WITNESS: I told Mr. Brown to bring with him to that conference the exact figures taken from the curves which he said that he had for the cost of the different types of ships, as to their probable cost.

BY MR. EVANS:

Q. In what form did he give them to you? Did he bring his original graph of curves?

A. No; he simply brought the figures.

Q. He brought the figures for the different types of ships?

A. For the East and West Coast ships. In the original proposition we merely hit an average price for East and West Coast for any given type of ship, and for this conference we were prepared to give the difference due to the difference in cost in the yards on the East and West Coast.

Q. Were the prices which were finally agreed upon in the meeting of January 3rd the same as the prices that were submitted in your proposal of December 19th, or were they less?

A. They were substantially less, both the fees and the base-prices.

Q. By what process did you arrive at the final figures which were agreed upon?

A. By the ordinary processes of barter and trade, Admiral Bowles standing fast that he would not give me what I asked, and I gradually going down until he finally accepted the figures, and in each case he Jewed me down to the figure that Brown had as his cost figure before he stopped, and there I would not go any lower.

BY MR. BROWN:

Q. Before he stopped, did you say?

A. Before he stopped and I would not go any lower.

Q. You mean that he did not attempt to Jew you down below those prices?

A. He certainly did.

BY MR. EVANS:

Q. But you stuck fast to the figures that Brown had given you?

A. Yes.

Q. At that conference was the subject of the stock ships at Union and at Sparrows Point taken up and disposed of?

A. Yes. After we had settled the question of new ships, I proposed that the stock ships be placed on the same basis, and that was agreed to very quickly. That took a very few minutes after we had determined the other question.

Q. When you say on the same basis, you mean as to the form of contract?

A. The same basis as the form of contract, and relatively the same prices.

Q. Relatively the same prices per ton?

A. Per ton, yes.

Q. Your proposal of December 19th was delivered by you personally to Mr. Piez, was it not?

A. Yes.

Q. On what date?

A. On the 20th.

Q. So that the Fleet Corporation had your figures from December 20th until January 3rd?

A. Yes.

Q. In that interval did any of the Fleet Corporation representatives ask you for any information as to how your estimates had been arrived at?

A. No.

Q. At the conference on January 3rd did any of the Fleet representatives ask you for any information as to how your estimates had been arrived at?

A. They certainly asked everything they could think of.

Q. Did they ask you how you had arrived at your estimates?

A. Yes, I should say so.

Q. What did you tell them?

A. We told them that we had arrived at it by using our best judgment from the costs of doing work at that time and that nobody could make a

decent estimate, that it was a matter of educated guesswork, as we had written them in each of the letters we put in, and that we thought we were putting in figures that represented a fair probable cost, giving us a chance, if we did the job well, to make a saving that would compensate us for part or all of the excess profit taxes that we would have to pay.

Q. What I really meant to inquire was this, whether the representatives of the Fleet Corporation, either at that time or at any time previous to the conference of January 3rd, had asked you for any of your cost figures on any previous vessels, so that they might check?

A. We told them we did not have any repeatedly. We told them there was no such thing as an estimate under those conditions.

Q. You did not get my question. Let me refer now to what Mr. Sanford said. Mr. Sanford said that if the Fleet Corporation had had available to it information from Bethlehem as to the cost of other similar vessels which had been completed prior to the contract ships, like 253 and 254, we will say, or 158 and 159, they would have been able to check the accuracy of these estimates. I am asking you whether, either at the conference of January 3rd or at any time previous to that conference, the Fleet Corporation representatives asked you for any such information?

A. I never recollect their asking for any such information, and I think I would remember it if they had.

Q. I will ask you whether at any time up to the time that the contracts were actually signed, the Fleet Corporation ever asked you for any such information?

A. No.

BY MR. BROWN:

Q. As I understand it, just to clarify the record, that relates from the time of the submission of your proposal of December 19th?

A. From the time of the first discussions of the proposals in December.

Q. The proposals of December 19th?

A. Yes. That covers the month of December.

MR. BROWN: That makes it cloudy again. I just want to get it clear.

MR. EVANS: If it is cloudy, Mr. Brown, I am afraid you have clouded it.

THE WITNESS: I will make it clear. They never asked me for those figures at any time.

MR. EVANS: I offer in evidence a memorandum addressed by F. T. Bowles and G. S. Radford to the United States Shipping Board Emergency Fleet Corporation under date of January 5, 1918, which appears at page 258 of the Documentary Evidence, and which was offered in the last proceeding by the Government as Exhibit G-117. I ask that that be marked in this hearing as B-28. With the Master's permission I will read it into the record now. It is addressed to the United States Shipping Board, Emergency Fleet Corporation, in Washington, dated January 5, 1918:

"Memorandum for the Vice-President and General Manager:

Bethlehem Shipbuilding Corporation, Ltd.

We hand you herewith the Bethlehem Ship-

building Corporation's proposal, dated December 19, for additional construction at their various plants, amounting in all to nineteen vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature, and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that corporation. Realizing that the nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated, and we believe

that we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,
Division of Steel Ship Construction.

G. S. Radford,
Manager,
Contract Division."

THE MASTER: At the bottom there it refers to two enclosures. Are you offering as Exhibit B-28 the enclosures as well or are they to be offered separately?

MR. EVANS: They took different exhibit numbers and we will offer them. It is agreed that the enclosures referred to and accompanying the memorandum of January 5, 1918, Exhibit B-28, were Bethlehem's proposal of December 19, Exhibit G-109, and letter from Mr. Charles Piez, vice president and general manager of the Fleet Corporation, addressed to Bethlehem Shipbuilding Corporation under date of January 5, 1918, which appear at pages 259, 264 and 267 of the Documentary evidence, which letters were offered in evidence at the last hearing respectively as G-118, G-119 and G-120, and which I now offer in evidence on behalf of Bethlehem as B-29, B-30 and B-31.

(Admitted as Exhibits B-29, B-30 and B-31.)

BY MR. EVANS:

Q. The reference in the memorandum is to the conference which you and Mr. Brown had with Ad-

miral Bowles and Mr. Radford on January 3rd, is it not?

A. Yes.

Q. Following the contracts which were the subject of these negotiations, Bethlehem from time to time took on contracts for additional tonnage from the Fleet Corporation?

A. Yes.

Q. Insofar as the terms of these contracts are embodied in the correspondence, I won't take the trouble to go over them in your testimony, but can you tell us whether all of these subsequent contracts were negotiated through correspondence or were there any conferences about which we ought to know?

A. There were one or two conferences at various times. The principal conference that I remember was the one in April between the time that Mr. Schwab had accepted the position of Director General and the time that he took office. Mr. Piez was anxious to have certain additional contracts cleaned up and out of the way before Mr. Schwab actually took office so there could be no question of his having had any hand in the business negotiations, and we therefore submitted a letter in April and I went down afterwards and straightened out a few questions in connection with it. I think that letter was signed by Mr. Brown and was dated April 18th.

Q. I call your attention to a letter which appears at page 385 of the Documentary Evidence and it is signed by Mr Brown and I will ask you whether that is the letter to which you had reference, the letter which was offered in evidence at the last hearing and has been offered in this case as Exhibit G-132?

A. That is the letter.

Q. With whom did you have that conference?

A. On Tuesday, April 23rd, I saw Mr. Hurley, Mr. Piez, Mr. Cuthell and went over all of the outstanding items and we settled everything in principal although a great many of the details were handled afterwards.

Q. Was there any discussion as to price at that time?

A. Yes, my recollection is that in submitting that letter of the 18th—

MR. BROWN: You said before in your testimony here there was practically no discussion about that?

THE WITNESS: That is correct. There was practically no discussion about price but I was simply trying to check up to see whether in that instance the Fleet Corporation accepted the price we put in or whether they cut them as they did on the previous ship.

BY MR. BROWN:

Q. But it is all a matter of correspondence?

A. It is all a matter of correspondence.

BY MR. EVANS:

Q. I did not get the connection between the letter of April 18th and the memorandum in your diary that I think you said was dated April 22nd?

A. April 23rd.

Q. How does that conference on the 23rd tie in with Brown's letter of the 18th?

A. At that time that letter was discussed and the Fleet Corporation told me definitely that they were giving us those contracts on whatever prices they had determined and that would be followed by

formal notice which did come some days later. Mr. Piez was trying to get the matter settled before Mr. Schwab took office.

Q. Were you soliciting this additional business or was it being urged on you?

A. We were not soliciting it. We were being pushed into it.

Cross Examination

BY MR. BROWN:

Q. Just to get the proper picture of what you were doing at the time of the negotiations of these contracts, as I understand it, from the time of the organization of the Shipbuilding Company until well on into 1918 you were literally swamped with your executive duties and it would have been physically and mentally impossible for you to burden yourself with the details and the business of your company. Is that correct?

A. That generally represents the situation. I was handling a great volume of business and was as busy as I could be.

Q. That is you were in charge of the active management, in other words, of all these five subsidiary companies of the Bethlehem Shipbuilding Corporation, were you not?

A. Yes, so far as their operation and the sales of their product was concerned.

Q. And would you say that from the time of the organization of the Shipbuilding Company, running through December of 1917, that you and Mr. Brown were in very close contact in all matters of cost affecting the shipbuilding industry?

A. We were in just as close contact as we could be, both being very busy men and having a great deal of traveling to do and often being separated for a number of days.

Q. Very frequently on your travels you took Mr. Brown along with you, as I understand it?

A. Very often.

Q. Referring to the chart which has been offered in evidence as Exhibit G-34½, and with respect to which you are now familiar, I will ask you if you remember the first time that you ever saw that chart?

A. No, I do not.

Q. And just to make it clear, as I understand it, you have absolutely no recollection as to the first time of your ever having seen that chart?

A. I have not.

Q. And, of course, in speaking of the chart, I am also speaking of a copy of the chart, whether photostated or otherwise?

A. Yes.

Q. And your answers apply to that, of course?

A. Yes.

Q. Do you remember ever having seen that chart or a copy of it prior to the hearing before Mr. Roberts which took place in May, 1929?

A. Oh, yes, I have seen it before that time.

Q. You had seen it before that time?

A. Yes.

Q. And where had you seen it before that time?

A. I think in Mr. Brown's office of the Bethlehem Company, New York, and I should say that the one time I saw that chart was in his office at 25 Broadway, New York. Whether I saw it subse-

quently at conferences with the attorneys I am not prepared to state.

Q. And about when did you see the chart in Mr. Brown's office in New York?

A. Well I cannot give you the exact date, but if you would like to have it I think I could find it. I did not know that was coming up.

Q. I would like to get it if you have it?

A. I would have to get it when I go back to Boston and had an opportunity to make an examination of my diaries for the last three years.

Q. How do you know there would be a record of your having seen that chart in your diaries?

A. Because I unfortunately have not seen Mr. Brown so often within recent years that I could not identify the date from the entries of my visits with Mr. Brown.

Q. I got the impression from Mr. Brown's testimony that you were a frequent visitor in New York, perhaps not a frequent visitor but that you would stop in from time to time to see him?

A. Well I did stop in occasionally but I don't believe I have been in Mr. Brown's office three or four times in the last three years, so I certainly was not a very frequent visitor.

Q. Where have you been located in business since leaving Bethlehem in 1920?

A. In Boston, and in New York. Boston has been my home. After I returned to Boston from my connection with the Emergency Fleet Corporation that became my permanent home and headquarters and I have been in business in New York and have spent a very considerable part of my time there.

Q. During all the years, we will say, between 1920 and now?

A. Between 1922 and the present time.

Q. You have spent a very considerable part of your time in New York City in business?

A. Yes.

Q. And you have had an office or your company has in New York?

A. At times and at times not.

Q. And where was your office located in New York?

A. First I was associated with Aldred & Co., 40 Wall Street, and for the last two years the United Drydocks at 11 Broadway.

Q. They were quite near to Bethlehem offices, were they not, within a block or so?

A. Reasonably. 11 Broadway is next door.

Q. So that it is quite possible that you have seen Mr. Brown frequently during the period between 1921 and 1922 and the present time, is it not?

A. I stated that I had occasionally seen Mr. Brown, not nearly as often as I should have liked to.

Q. What I want to know, if you had access to these diaries that you mentioned, would you be able to tell from those diaries that particular occasion upon which Mr. Brown produced this chart and showed it to you?

A. No, sir. As I said, I saw him so infrequently that the context of my diary, the first meeting when we were considering the Bethlehem case, I believe I could pick out the exact date on which I saw that chart when I looked up my diary, but when I do I may not be able to do it at all.

Q. That is just what I supposed. In other words, according to the nature of your diary as you explained in your direct examination, it is quite like-

ly that if you did see this chart on one of your visits to Mr. Brown there would be some notation which would indicate to you that he had showed you that chart?

A. No, quite improbable that I would have made any note as to having seen the chart.

Q. And I suppose it would be equally improbable that your diaries of November and December, 1917, would contain any notation in case that chart had been presented to you?

A. They do contain no notation of that sort.

Q. You are quite sure of that?

A. Yes.

Q. There is nothing in your diaries which would indicate to you that during November and December, 1917, or prior to January 3, 1918, Mr. Brown showed you the chart to which I have referred?

A. There is no mention of the chart.

Q. Going back to your visit to Mr. Brown's office, in New York, when you discussed the subject, do you say the chart was shown to you at that time?

A. Yes.

Q. And you cannot give us approximately the date when that occurred, as I understand it?

A. Well I can say that it was between two and three years ago.

Q. And it is true, however, that you have a very distinct recollection now of having seen the chart at that time?

A. Yes.

Q. And there is no doubt about your having such a recollection, is there; no doubt about your having seen the chart at that time?

A. I think not.

Q. And what was the occasion of the chart being shown to you at that time?

A. Mr. Brown and I were discussing this Bethlehem suit and its various aspects.

Q. And, as I understand it, he then produced the chart and said "Powell (or whatever name he called you) here is the chart for all the estimates I submitted to you as the basis for the contracts in controversy"?

A. That I don't remember.

Q. I mean, in effect, that would be the nature of the discussion?

A. That would seem reasonable.

Q. And he would say, "Remember now, you have a very substantial interest in this litigation, you will get seven-tenths of one per cent—"

A. May I state right here Mr. Harry Brown never made any such statement to me and he knows me well enough not to insinuate any such thing has any bearing on my conversation or on my testimony.

Q. I am only trying to help you and my question was not asked with any idea that any reflection on either you or Mr. Brown but I was merely trying to state what the probability was in connection with this conference to see if I can refresh your recollection as to what took place.

Now, coming back to your interest in this litigation, it is a fact, is it not, that your interest in whatever is recovered by the Bethlehem Corporation from the United States Government in this case, amounts to seven-tenths of one per cent?

A. Not necessarily what they recover from the Government. It is seven tenths of one per cent. of the profits accruing to Bethlehem except on troop ships, from these contracts.

Q. So you have a very substantial interest in the outcome of this litigation.

A. I have.

Q. In view of that fact would it not be likely when Mr. Brown produced this chart in New York at this conference that you would have some recollection as to what was said about that chart?

A. I have talked about this suit so many times and so much and to so many people that if I had an accurate recollection of all that was said about it there wouldn't be room in my head for anything else.

Q. That is very plausible and I am not asking you to remember anything that is impossible to remember, but Mr. Mason is hearing the case for the first time, and, as I understand your testimony, and I may be wrong, Mr. Brown had an interview in his office with you which took place within the last two years in all probability?

A. Three.

Q. For the first time, according to your recollection, he showed you this chart which has been offered in evidence as G-34½?

A. Mr. Brown, I didn't make any such statement.

Q. Isn't that correct?

A. No. To the best of my knowledge and belief I probably saw that chart a number of times while it was being used at Bethlehem and while Mr. Brown was working on it.

Q. I am asking about your recollection. Do you recall having seen that chart prior to this interview with Mr. Brown about which we have been discussing?

A. I cannot give you a definite statement that I

recollect it because I don't. I am morally certain that I saw it not once but several times.

Q. When he presented that chart to you within the last two or three years in his office in New York, did you then say, "Why, that is an old friend that I have often seen, that chart". Do you remember that?

A. I don't recall that I recollected that at all.

Q. You don't remember that you ever have seen that chart before Mr. Brown produced it in New York?

A. I have no definite recollection I saw it before, although I believe I had seen it a number of times. I certainly knew of its existence.

Q. Because of what Mr. Brown had told you?

A. Because of what Mr. Brown told me in our various conferences in Washington in 1917.

Q. But not because you have any recollection of ever having seen the chart yourself; is that correct?

A. That is correct. I cannot say definitely that I did see that chart on any certain date.

Q. But you knew it existed because Mr. Brown told you it existed; is that correct?

A. Yes, correct.

Q. Well, as I understand it, to summarize the situation, you don't remember what the discussion was which took place when Mr. Brown produced this chart at your talk when you met in New York; is that correct?

A. Yes.

Q. Do you remember whether you told him at that time that you did not remember anything about the chart?

A. No, I do not.

Q. You don't remember what took place?

A. No.

Q. I ask you whether you testified as follows, in answer to the following questions at the proceeding before Mr. Roberts, which appear at page 658 and the following pages in the record of the proceedings, being questions by Mr. Brown:

"Q. Mr. Powell, when did you first see the original of the chart which has been offered in evidence?

A. I don't remember.

Q. Do you think that it was some time after the contracts had been entered into?

A. I don't remember.

Q. Can you give us any approximate date when you first saw the chart?

A. I can't give you any approximate date whatever.

Q. Can you tell us when you first knew of the chart's existence?

A. No.

Q. You cannot even approximate the year when you first learned of the chart's existence?

A. Probably 1917.

Q. Do you remember ever having seen the chart prior to the hearing before Mr. Roberts?

A. I should say I did remember it, but I have no very clear recollection of it. I remember very distinctly Mr. Brown's making the chart at our meeting in Washington on December 18th.

Q. That was the reconstructed chart?

A. The reconstructed chart. I must have known he had the chart, but I have no particular recollection.

Q. You have no particular recollection of having seen the original of this chart?

A. No.

Q. You cannot recollect any occasion for having seen the chart?

A. No. When we came to our later negotiations, as I recall it, Mr. Brown had taken off the exact spots that represented his chart costs, and in our subsequent work we used those prices."

You so testified?

A. Yes.

Q. And that testimony is correct?

A. That is correct, and I believe what I have just given you is absolutely in accordance with it. If not I have not stated myself correctly in both cases.

MR. WOOD: Are you going to stop reading there.

MR. BROWN: No, I will read the rest.

BY MR. BROWN:

Q. Mr. Wood suggests that I read the rest, and I will ask you if you did not testify as follows:

"Q. So far as you can recall, subsequent to your use of those prices there was no occasion for Mr. Brown's ever having brought this original chart to your attention?

A. There might have been a dozen occasions. We might have talked about it and looked at it, and I might have forgotten completely, because there was no reason I knew then to remember it.

Q. If there have been such occasions, you have completely forgotten them?

A. Yes.

Q. Having completely forgotten those occasions, you of course completely forget the conversation or possible conversation referred to by Mr. Brown with you or Mr. Smith and Mr.

Schultz relating to the preliminary East Coast Cargo and tank ship lines referred to?

A. I have no recollection of any such conversation."

You so testified, did you not?

A. Yes.

Q. And that is correct?

A. That is correct?

Q. In other words, right on the subject of these erasures which appear on the chart and which have been the subject of Mr. Brown's testimony, you recollect no conversation with him relating to any such subject whatsoever; is that correct?

A. None whatever.

Q. And it appears at page 653 of the testimony before Mr. Roberts that you testified as follows:

"A. I haven't talked to him (meaning Brown) about that chart except as I heard it explained in this room, or to mention it for two minutes since 10 or 12 years past", and that is correct, is it not?

A. Yes.

Q. Do you remember whether or not you discussed this chart with anyone besides Mr. Brown in connection with the preparation for the hearing before Mr. Roberts?

A. Oh yes, it was discussed in the attorneys' office on several occasions.

Q. It was discussed in Mr. Cravath's office in the presence of yourself on several occasions?

A. Yes.

Q. The original chart?

A. Yes, the original chart is the only chart I know of.

Q. I mean the chart we are discussing which has been offered in evidence as Exhibit G-34½?

A. Yes.

Q. Either the original or a photostat?

A. The chart was discussed in that office. We were talking about the original chart that Mr. Brown had made at Bethlehem.

Q. That was fully discussed in advance of the hearing before Mr. Roberts in your presence?

A. In my presence.

Q. You knew of the chart?

A. I knew of its existence, how it had been made and I had heard some discussion but I was not interested in it, and I didn't pay much attention to it.

Q. Let us get clear what you have in mind. As I understand it, there were a number of discussions in preparation for the hearing before Mr. Roberts, these discussions taking place in Mr. Cravath's office in New York at which this chart was disqussed?

A. Yes.

Q. And that was in connection with the preparation of Bethlehem's case for the hearings before Mr. Roberts?

A. Yes.

Q. And, as I understand it, your recollection is, while not very distinct, that there was some discussions at these conferences with respect to the manner in which that chart had been prepared; is that correct?

A. Yes.

Q. But you were not interested in such discussions and therefore have no distinct recollection as to what was said?

A. No. The primary question involved was as to my recollection—it was my testimony being dis-

cussed and the primary chart involved was my recollection as to the chart.

Q. Were efforts made to refresh your recollection as to the manner in which that chart was prepared?

A. Counsel had not tried to influence my testimony in any way.

Q. I didn't mean that.

A. What do you mean.

Q. I mean, if you will permit me to finish, I am not attempting to say that anybody put anything in your mouth or anything of that sort, but what I want to find out is this; isn't it probable that in connection with Bethlehem's case, that you and Mr. Brown having conducted these negotiations apparently on the basis of this chart, that you would be interrogated as to your knowledge of the basis of the chart? Isn't that probable?

A. Not necessarily so. The primary question involved was whether I remember the re-constructed chart which was the one that was used in making up our prices. Now my recollection of the reconstructed chart was perfectly distinct. I will say Mr. Brown and I did not agree on the color paper it was on but after the number of years that had passed that did not seem to be essential. I thought it was on white paper and he thought it was on yellow and we both decided that it must have been on the yellow paper.

Q. But, as a matter of fact, you also disagreed with him as to how the curves had run on the reconstructed chart, didn't you?

A. Yes, and after the number of years I don't think that was essential.

Q. You disagreed with him in your recollection as

to how the curves ran on the reconstructed chart, as I understand it?

A. Yes, that was after 10 years, and the fact that we remembered as much as we did and as closely as we did was rather a matter of astonishment to me.

Q. And, as I understand it, it was your recollection that probably the re-constructed chart had the per ton curve running from possibly the righthand lower corner of the chart up towards the center of the chart rather than a line running from the lower lefthand corner of the chart up towards the top righthand corner of the chart; is that correct?

A. Of course that made no difference whatever as except to how you spotted your figures.

Q. I mean that was your recollection?

A. Yes, that happened to have been my recollection of it.

Q. And your recollection was very clear and distinct that there had been a reconstructed chart in Washington?

A. Yes.

Q. Or at least a chart in Washington?

A. Yes, definitely.

Q. And your recollection was not equally distinct with respect to the chart offered in evidence as G-54½?

A. I think we have covered that fully in my previous testimony.

Q. Now, in connection with the December 18th conference, as I understand it, you came from New York to attend that conference, did you not?

A. Yes.

Q. Do you remember when you arrived in Washington?

A. About 11 o'clock on the morning of December 18th.

Q. And you had just come from New York at that time?

A. Yes.

Q. And you had requested Mr. Brown to be at that conference and meet you in Washington, as I understand it?

A. Well, he met me there. I have no definite recollection of how it came about. I undoubtedly did tell him to meet me.

Q. In other words, on your arrival you met Mr. Brown at Washington?

A. Not necessarily on my arrival, but he joined me there. My diary here says: "Arrived about 11 met Willard, at Brown."

Q. You were coming down for the purpose of submitting this proposal, were you not?

A. Yes.

Q. And you had instructed Brown to meet you in Washington, as I understand, for that purpose?

A. Yes.

Q. So it is likely, is it not, that you advised Mr. Brown you were coming down and asked him to meet you in Washington?

A. I think it is probably so.

Q. You don't think it is likely that you would have waited until you got to Washington and then asked Mr. Brown to come down and attend the conference?

A. Well, it is not unlikely at all. If Mr. Brown was in Baltimore it is possible that I might have waited until my arrival in Washington and telegraphed him asking his to come to Washington. I have no recollection of it whatever.

Q. That is what I have in mind. You had a very particular purpose in going to Washington, to present this proposal to the Fleet Corporation and

Mr. Brown was a subordinate of yours and it is likely, as I suggest, that you instructed Mr. Brown before you left New York, or had someone instruct him, to meet you in Washington? Isn't that probable?

A. That is so and it is equally likely if I knew he was to be at Sparrows Point on that day that I waited until I got to Washington and telephoned him and then waited until he got over. I have no recollection whatever of how it was done.

Q. But you do have a recollection, do you not, that that conference of December 18th, lasted for several hours in the afternoon?

A. Yes.

Q. And that during the evening and night of December 18th, following that conference with the Fleet representatives, you and Mr. Brown spent several hours at the hotel Willard in preparing the data which you afterwards used in connection with your proposal of December 19th?

A. Yes.

Q. And then, as I understand it, you went to the Harlan Plant at Sparrows Point the following day?

A. At Wilmington.

Q. At Wilmington, and then you prepared the proposal of December 19th, and on the following day returned to Washington and handed the original to Mr. Radford and a copy to Mr. Piez?

A. Yes, that is correct.

Q. Now, with respect to the allowance of approximately $10 per dead weight ton which you added to the figures submitted to you by Mr. Brown in presenting your proposal of December 19th it appears that you testified as follows at the previous proceeding at pages 544 and 545 in answer to questions by Mr. Evans:

"Q. It would appear from the figures you quote on page 228 that your price on the 10,000-ton tanker is about $10 per ton in excess of the price as it figures out according to Brown's curves, using the average East and West Coast costs, as Mr. Brown testified you did. Can you today account for that difference of about $10 per ton?

A. Well, I can account for it, but as for giving a definite and absolute statement that I can remember just how we did it, I can't. The item of $10 of extra cost for extra tonnage is almost self-evident. I should say the chances are I would put it in as anyone would, going into a business deal."

THE WITNESS: That was afterwards corrected to $2.50. That is corrected later on in the testimony.

MR. BROWN: Changed it to $2.50.

MR. EVANS: And that extra tonnage, should that be corrected?

THE WITNESS: For extra cost of high priced steel.

BY MR. BROWN:

"Q. I should say the chances are I would put it in as anyone would, going into a business deal." You refer there to the balance of the $10.00?

A. Yes.

"Q. Do you mean by that that you deliberately increased a figure that you thought a proper figure, for trading purposes?

A. Just exactly what I mean. I had something in there for trading purposes."

Q. Is that correct?

A. Yes.

Q. And that was in answer to questions by Mr. Evans?

A. Yes.

Q. And at page 544 of the previous testimony it appears you testified as follows in answer to the following questions by Mr. Evans:

"Q. You could not today tell us how Brown arrived at his figures?

A. I could not.

Q. Did you have any other figures before you that you had gotten from your Estimating Department or Accounting Department?

A. No, none whatever.

Q. So that whatever figures you finally arrived at and quoted in this proposal, as I understand it, were based on figures that Brown furnished?

A. That is correct."

And that is correct, is it not?

A. Yes.

Q. Do you remember any reason for not submitting in your proposal of December 19th, 1917, the breakdown which Mr. Brown now says that he had made in connection with a tanker of 9100 tons similar to Hull 253? Would you like the question repeated?

A. I understand the question but I don't know what Mr. Brown said and it don't mean anything to me.

Q. I don't know whether you have already testified, but to make sure, at this conference of January 3rd, 1918, Admiral Bowles submitted no figures he made for these ships, did he?

A. The only figure that I remember, and I have

no very clear recollection about it, is that he wanted us to take some of these stock ships at $180 a ton. I have no definite recollection as to whether that came up at the conference of January 3rd or not.

Q. And that was a lump-sum price he was talking about?

A. Yes.

Q. And with respect to the ships subsequently included in the Half-savings contract, as I understand it, Admiral Bowles proposed no prices himself?

A. No, he never made any price himself. When I offered a figure he simply said too high.

Q. And that process of trading is described in your previous testimony as follows, at page 564, and I ask you if that correctly represents the situation. This is in answer to questions by Mr. Evans.

"Q. By what process of trading did you get down to those prices?

A. By the ordinary process between business men, trying to reach a meeting of prices."

THE WITNESS: That should be a meeting of minds.

BY MR. BROWN:

"Admiral Bowles reduced the price, and I made a concession. Then I made another price, and so on, until I finally stuck at a price below which I would not go, and he finally accepted.

Q. You were the only one who made any concessions?

A. Yes.

Q. He did not stop at any figure and make any concession?

A. No. The conceding was all on my part.

Q. When you had been Jewed-down to rock bottom prices, there you stuck, and Admiral Bowles finally met you?

A. Yes."

That is correct?

A. Yes.

MR. EVANS: I do not want to interfere with any proper cross examination but so far I have not observed any substantial contradiction between the testimony to which the attention of the witness has been directed and the testimony he gave here.

THE MASTER: It may be the reverse that Mr. Brown has in mind. It may be that Mr. Brown is showing how it agrees with the other testimony.

MR. BROWN: I just don't want to have any doubt about what took place there.

BY MR. BROWN:

Q. Mr. Piez had joined the Fleet Corporation in November, 1917, had he not?

A. I think that is correct. It was about that time. My first record of meeting him was November 28th, I believe.

Q. You knew who he was and what his business experience had been prior to that time?

A. Yes, very well.

Q. And you knew he was not a shipbuilding man, of course?

A. Oh, yes, I knew he was not.

Q. That had not been his line in any way?

A. No.

Q. He was not familiar with the shipbuilding business?

A. No, he had grown up in the Link Belt Company, was president of it at the time he went to the Fleet Corporation.

Q. About what time did he become General Manager? Towards the middle of December, 1917, was it not?

A. I think a little later than that. I think it was close to the first of January. Admiral Harris was General Manager, from the reference in my diary, and he was still at the Fleet Corporation very late in the month. I think it is just about the 1st of January that Mr. Piez became General Manager as well as vice president.

Q. There had been numerous general managers prior to his becoming such, had there not? There had been frequent changes?

A. There was three before Mr. Piez.

Q. And he was a tremendously busy man, was he not, during November and December of 1917 in trying to get this tremendous business of the Fleet Corporation organized?

A. Tremendously busy, yes.

Q. If anything, the business of the Fleet Corporation even exceeded the business of the Bethlehem, did it not?

A. Many times.

Q. And Mr. Piez was trying to do with the Fleet Corporation about what you were trying to do with the Shipbuilding organization, was he not?

A. Yes.

Q. In other words, he was literally swamped with work, during this period, was he not?

A. He was a very busy man.

Q. It would not have been possible for Mr. Piez at that time to burden himself with the details about the business of the Fleet Corporation, would it?

A. It depends on how important they were. If there was any important detail he certainly had time or could have taken time to burden himself with it. When it came to handling a question of handling wages and putting the East Coast yards on Navy Yard wages that was important enough for him to sit down and do it himself.

Q. But with respect to matters such as determining the propriety of shipbuilding estimates and costs he would require technical experience and advice, and he would not be in a position himself to sit down and talk about or investigate the propriety of such details?

A. If if was considered of sufficient importance he could have given it the time. That was up to him.

Q. Would you consider that a detail of the business?

A. No, not when the biggest contracts we had were to be let, that is not a detail of any business.

Q. At page 631 of your previous testimony it appears you testified as follows:

> "A. Mr. Piez was running an enormous business. He could not more be burdened with the details of the business than I could be burdened with the details of the much smaller business I was running."

That is correct, is it not?

A. Yes, I have just repeated that.

Q. Very well, sometimes we don't quite understand whether we agree on our inferences from your answers and am I correct in understanding that you do not think it was necessary for Mr. Piez to rely on his assistants for technical matters like estimates and costs?

A. I never made any such statement.

Q. Do you think it was?

A. Every executive must rely on his subordinates. It is always a question of the importance of the matter at issue. If the matter at issue is of sufficient importance the executive goes into it personally.

Q. I am going to ask you if you don't think it would be necessary for Mr. Piez to rely upon his subordinates in that organization for advice concerning such technical matters as shipbuilding construction and costs?

A. Why, of course, rely on them to a certain extent, not to the extent that his was not the final judgment when a matter of importance was presented to him. Every big executive has dozens of questions that come up to him from his subordinates that he O. K.'s without looking at it, but when an important matter comes up it is his responsibility to be sure the facts are presented and that the judgment is proper.

Q. When I say necessary for him to rely on them I mean rely on data and information supplied by his subordinates?

A. Yes. I would like to change that to he must be guided by but not necessarily rely on the data and facts.

Q. I am as anxious to make progress as you are, and you don't mean under those circumstances you would expect Mr. Piez to make a study of the shipbuilding construction situation and pick out costs of construction, if any were available and for him himself to determine the propriety of these prices when he had men like Admiral Bowles there to advise him in regard to these technical matters?

A. Mr. Piez was in a position to find out, with-

out a great deal of expenditure of time, what contracts had been awarded to other people, and whether the prices that we were presenting were out of line with what other people were showing or not. We had no knowledge whatever of what other people were doing at that time.

Q. I understand entirely what you have in mind, I think, and that is, that Mr. Piez, if he was presented with cost data such as I say indicated the technical advice of his subordinates, no matter how busy he was you think he ought to check up that price with other prices being awarded to other shipbuilders? Is that correct?

A. No, that is not correct at all. My point is this, that if Mr. Piez had wanted to sit in at meeting between Admiral Bowles and myself, he could have very quickly judged between us and have compared the figures we were submitting, where they were reasonable, and on his judgment, from such facts as we submitted to him, I was perfectly willing to accept contracts.

Q. But the only practical test Mr. Piez was in a position to make himself, as I understand it, would have been a comparison of the prices submitted by you with the prices being awarded to other shipbuilders for ships in a general nature similar; is that not so?

A. Well, he could have made that comparison without great difficulty.

Q. And that is the only comparison, so far as you know, just to have this understood, that he personally was in a position to make at that time, was it not?

A. Well, Mr. Brown, it depends entirely on how important he thought it was.

Q. May I make it clear that I am distinguishing

between what Mr. Piez could do himself and what he could do, in your opinion, with his subordinates. Does that make it clearer?

A. It depended entirely on how important he would think it was and how much time he was prepared to give to it. If he thought it was important enough he could make any investigation and any comparison that anybody wanted to make.

Q. As I understand it, your December 19 proposal was handed to Mr. Piez on December 20, at least a copy was handed to Mr. Piez on December 20?

A. Yes.

Q. And then, on the evening of December 20, you had your conversation with Messrs. McBride and Day, to which you referred in your direct examination?

A. Yes.

Q. And then, I think, you have previously testified, you spent a sleepless night and reached the conclusion that Admiral Bowles, or at least this is the effect of your testimony, that Admiral Bowles would never agree to the base prices which you had submitted, although the proposal of December 19th had practically just been submitted and although no representative of the Fleet Corporation had had an opportunity to consider it or to call you about it—is that correct?

A. No, that is not correct.

MR. EVANS: Are you reading this as his answer to questions at the last trial?

MR. BROWN: No.

THE MASTER: He was summarizing his conclusion as to the effect on Mr. Powell, as I understand it, of the general situation.

MR. BROWN: That is correct.

THE WITNESS: Mr. Brown, I covered this very exactly in my testimony. I can go over it all again and come pretty near telling much the same as I did before.

MR. BROWN: I would like to examine about more than you testified to before, and let me see if I can ask you questions which can be answered with more or less directness.

BY MR. BROWN:

Q. As I understand it, you submitted your proposal of December 19, to Messrs. Piez and Radford on December 20; is that correct?

A. Yes.

Q. That far we are all right?

A. Yes.

Q. Then you spent a sleepless night after your talk with Messrs. McBride & Day?

A. To begin with, I didn't say I spent a sleepless night. I said I spent some sleepless hours. Let us be accurate, if you want to be accurate.

Q. You spent some sleepless hours after your talk with McBride & Day. That is correct. You said in your previous testimony, "I spent some sleepless hours" and then, although the Fleet representatives had had no opportunity to consider your proposal of December 19th, or to call you with respect to its propriety, you came to the conclusion that Admiral Bowles would never agree to those figures and that you were not going to be an obstacle to the success of the United States in the World War and therefore you came with your offer to Mr. Piez the following day, did you not?

A. I didn't say that at all. Now that is just ex-

actly where we differ. I never said Admiral Bowles would never accept those figures. I did not believe I was going to negotiate a satisfactory contract with Admiral Bowles because of the strained personal relations between he and I and I did not want any delay and the quickest way was to put the matter right to Mr. Piez, which I did that day. There was no necessity for my waiting for Admiral Bowles, because I knew him too well and too long. It was only extra lost time in waiting for him.

Q. You had, as I understand it, before the Fleet Corporation had an opportunity to consider your proposal of December 19th, which you handed to it on December 20, gone to Mr. Piez on December 21, and made your offer; is that correct?

A. Yes. They had had 24 hours and that was a long time in those days if you were in a hurry.

Q. They had had 24 hours before you saw Mr. Piez the following day?

A. Well, did you suppose they had already considered it and had rejected your offer?

Q. I didn't know.

A. Did you ask?

Q. I think it would have been probable, if you thought that they had already considered your proposal—

A. I don't think it is material.

Q. Won't you leave some of the case to the counsel?

A. Yes.

Q. Don't you think it is probable if you thought the Fleet had already considered your proposal which you had submitted on December 20, by the time you saw Mr. Piez on December 21st, and had made this offer to him, you would have found out whether your proposal was acceptable or not?

A. Not under the conditions.

Q. Then, as I understand it, you went to Mr. Piez on December 21 and stated that while you would not accept a fixed price you would accept the contracts on the basis of any fee or any percentage of savings or any base price that Piez wanted to fix; is that correct?

A. That is just what I said.

Q. In other words, you were entirely willing to trust Mr. Piez's judgment in the matter, were you not?

A. I was.

Q. Although you were equally unwilling to trust to the judgment of any other representative of the Fleet Corporation, were you not?

A. That is true.

Q. And the relations between you and Mr. Piez at that time were very close, were they not?

A. I had met him probably four or five times altogether in his life and in my life. I suppose I might have spent as much as 6 hours with him altogether at that time.

Q. When did you first come in contact with him after he joined the Fleet Corporation?

A. I think it was November 21st at a meeting in Philadelphia in connection with labor rates where all of the shipbuilders were present, and that was the second time I had ever met him in my life.

Q. And the first time had been many years before that?

A. Yes.

Q. And there is no reason for you to suppose that Mr. Piez at that time did not have entire confidence in your business experience and ability as well as in your business integrity, was there?

A. Well if I did not think he had I never would have made that offer to him.

Q. Having complete confidence in Mr. Piez, did you go so far as to advise him that in this December 19 proposal which you handed to him that you had included this allowance of $10 per dead weight ton for trading purposes?

A. I did not.

Q. And when it came to the January 3rd, 1918, conference, as I understand it you handed to Mr. Piez that letter of that date in advance of the conference which took place with the Fleet officials?

A. Yes, I handed him the letter in the morning when we went to Admiral Bowles' office and arranged the afternoon meeting.

Q. So that Mr. Piez not only arranged the conference but knew all about its purpose, that is of January 3rd?

A. Yes.

Q. In other words, it was a conference at which you, Mr. Piez and everybody else that participated understood that it would be a meeting to agree upon terms and prices?

A. Yes.

Q. Just clarify one thing that I don't know whether I have straight in my own mind or not, isn't it a fact that no matter what the personal relations were between you and Admiral Bowles, that, so far as you know, he had no reason to suspect your business integrity?

A. Why, I don't think he had any reason in the world to suspect my business integrity but I think he would have taken a keen delight in sticking the harpoon in me and turning it and if he could have gotten these ships at less than cost he would have thought it was the smartest thing that he ever did.

Q. And you think his animosity, as I understand, was because you had been a competitor of his when you were connected with the Cramps Shipyard?

A. No, I can tell you the story. It started with the negotiation for a turbine the contract for which I had made at Cramps and afterwards Admiral Bowles thought it was covered by patents which we infringed and that resulted in some very bitter litigation that lasted for some time and that was the basis of the hard feeling that he started and that I afterwards carried on.

Q. Admiral Bowles, of course, was just as fully aware of the important emergencies that existed as you were, was he not?

A. Yes.

Q. It was not your thought that Admiral Bowles would jeopardize the interest of this country in connection with the war by allowing some personal feeling with you to interfere with his placing these contracts?

A. I think that Admiral Bowles had a very keen sense of his responsibility but he had the unfortunate characteristics that when his personal animosities were aroused I don't think his judgment was good. He would not have thought that he was holding up the Government's business when I would have thought that he was very badly. I very much regret to make a ny statement of that sort about a man who cannot an wer it. I have in certain ways a very high regard for Admiral Bowles, his ability and his personality and I am the last one that would want to show anything about a man that cannot answer.

Q. I can only say that I originally did not bring this question out and it is my duty to go into it, as I have done, and as I see my duty. Prior to the con-

ference of January 3rd you believed that Admiral Bowles was still going to object to the price even though you eventually took off the allowance of $10 per dead weight ton?

A. I thought it extremely probable he would.

Q. As long as it was not certain, can you explain why it was that you did not wait until after the conference of January 3rd, 1918, before you presented your letter to Mr. Piez submitting it to his judgment as to what the terms and prices should be?

A. Because I believed that every day saved in the awarding of that contract was a vital matter and I saw no reason for letting one day or two days or three days or more go by before I put the proposition up to them. As a matter of fact, I believe that putting that proposition up to Mr. Piez is the only reason the award of those contracts was settled on January 3rd and I believe that if I had not done it that it would have dragged along for a considerable longer period.

Q. Now, do I understand that you advised Admiral Bowles that you had made such a proposition to Mr. Piez?

A. No, but I think that I can state that Mr. Piez advised Admiral Bowles that I had made such a proposition.

Q. You cannot state it over my objection unless you know he did. Do you know that he did?

A. No.

MR. BROWN: I ask that that be stricken out.

THE MASTER: That can be stricken out.

BY MR. BROWN:

Q. In other words, so far as you know, you do not know whether Mr. Piez ever said a word either

to Admiral Bowles or Mr. Radford or anybody else with respect to your offer to him which appears in your letter of January 3rd, 1918?

A. I have no positive knowledge.

Q. Why didn't you tell Admiral Bowles that such an offer had been made?

A. There was no reason why I should tell Admiral Bowles that I had made that offer. It would only have made it more difficult to deal with him if I had to. I did not know whether Mr. Piez was going to step out of the situation and leave me to Admiral Bowles and I had trouble enough without making extra ones of my own.

Q. In other words, is it a fair statement that Mr. Piez had an understanding that you submit your proposal to Admiral Bowles and see what you could do with him and if you couldn't make out as well as you thought you would that you should submit the letter to Mr. Piez?

A. There was no such understanding. My letter states absolutely the situation. When I had handed that letter to Mr. Piez he took me into Admiral Bowles' office after a minute or two of conversation, in which no understanding whatever was mentioned and told Admiral Bowles to arrange for this afternoon conference and told him that he wanted to have this matter settled expeditiously.

Q. And so far as you know that is all that you said to Mr. Piez in that conference?

A. Absolutely.

Q. Can you explain why, with this letter in his pocket or in his hand, or wherever it was, he walked into this conference with Admiral Bowles and with Mr. Radford, called especially for the negotiation of these contracts and made absolutely no

mention of your having made such an offer to Admiral Bowles or anyone else?

A. No.

Q. You cannot explain it?

A. I don't see that requires any explanation. I negotiated until we reached a settlement, why I should then have injected that letter into the situation I cannot see.

Q. Did Mr. Piez ever make any effort to get you to reduce your prices either in your December 19th proposal or the prices agreed upon on January 3rd?

A. He didn't have to make any effort.

Q. I am asking you if he did make an effort?

A. No, he did not.

Q. After he got the recommendation from Admiral Bowles and from Mr. Radford, which had been offered in evidence, suggesting that while the urgency of the situation was such as to make it advisable to accept your figures they were nevertheless in their judgment too high, so far as your recollection goes he never attempted to get any reduction from you or anyone else connected with Bethlehem; is that correct?

A. That is correct.

Q. So that we don't have to go all over your testimony, you understood, did you not, when I discussed the letter of January 3rd, 1918, which you had written to Mr. Piez, making the offer which has been the subject of your testimony, that I referred to a letter which appears at page 256 of the Documentary Evidence, previously offered as Exhibit 116?

A. Yes.

MR. BROWN: If there is no objection, I will offer that letter now.

(Admitted without objection as Exhibit G-116.)

BY MR. BROWN:

Q. And there is no question, as I understand it, that when I have been talking about an offer and a letter of January 3rd we have been referring to the letter offered as Exhibit G-116?

A. That is my understanding.

Q. It appears from the letter of January 5, addressed by Mr. Piez to the Shipbuilding Corporation, which letter appears at page 259 of the Concession of Documentary Evidence that Mr. Piez there stated: "Referring to your proposal covering building of additional tonnage, dated December 19th, 1917, and so forth", and then he goes on to describe what will be done in connection with the construction at the Union plant, and refers to five tank vessels of about 10,100 tons dead weight, for which drafts of contracts are being prepared, and then that letter goes on to state: "It is our understanding that your Mr. Powell is on his way to the Union plant; that he will promptly advise us if you are able to take five additional similar vessels under the above conditions with an extension of plan," and so forth. That expresses the understanding upon which the conference of January 3rd adjourned, does it not?

A. Yes, so far as that particular question is concerned.

Q. In other words, to make clear what I am driving at, it was agreed at the conference of January

3rd that the Union plant would undertake the construction of five tank vessels of about 10,100 tons dead weight?

A. No, that I was to see whether they could, that I was on my way west to see whether they could.

Q. Let me finish my question, that the Union plant would undertake the construction of five tank vessels of about 10,100 tons dead weight and that you were going out to the Union plant and would promptly advise the Fleet if you were able to take on five additional similar ships; is that correct?

A. Yes.

Q. And that was the understanding upon which the conference of January 3, 1918, adjourned?

A. Yes.

Q. In view of that fact can you explain why in the first paragraph of this letter of January 3, 1918, which has been offered in evidence as G-116 you stated in your letter to Mr. Piez, "Referring to this company's letter of the 19th ultimo, referring to the subject of additional tonnage I further state the situation at the Union plant, San Francisco, California, is such it will be practicable to undertake the construction of ten tank vessels instead of five", and so forth?

Can you explain that statement in that letter?

A. Explain what? I made a definite statement there and then I got on the train to go to San Francisco to be sure that we could do it.

Q. That is all the explanation you have as to that?

A. That is all the explanation I have.

Q. In other words the conference of January 3rd adjourned with the understanding that while the Union would undertake the construction of five tankers, and that you would go west to determine

whether you could take on an additional five, you had already informed Mr. Piez in that conference of January 3rd that the Union plant was prepared to take on the full 10 tankers; is that correct?

A. That is correct, and it is quite evident from the letter and the text and in our conference we decided that we were not between us very sure that Union was not biting off more than it could chew and as I was on my way to Union it was my thought to wait until I looked over the situation on the ground.

Q. You don't think there is the possibility that the date of that letter of January 3rd may have been wrong, do you?

A. Not the slightest in the world.

Q. You don't think that possibly it may have been January 13th and sent from San Francisco to Mr. Piez?

A. There is not the slightest chance in the world that is so.

Q. You have a very distinct recollection that you handed that letter to Mr. Piez in advance of the conference of January 3rd.?

A. That is one of the things that I have done in my life that I will never forget.

Q. As I understand it the Destroyer contracts of December 6th, 1917, were the first half-savings contract which were made by the Bethlehem Company in connection with this war work, were they not, or in connection with any war work?

A. Yes.

(Recess from 1 o'clock to 2 o'clock, p. m.)

J. W. POWELL, cross examination resumed.

BY MR. BROWN:

Q. Mr. Powell, it appears at page 586 of the previous proceeding before Mr. Roberts that you testified as follows, in answer to my question: "Q. The principles and the purposes of the half savings form of contract, and the reasons for the adoption of that form of contract were exactly the same in connection with the Fleet contracts as they had been in connection with the Navy contracts, were they not? A. Yes." That is correct, is it not?

A. Yes.

Q. As I understand it, the base prices and fixed fees with respect to the destroyer contracts of December 6, 1917, which have been offered in evidence, were agreed upon at a conference with the Navy representatives on October 8, 1917; is that correct? That is the date you gave at the last proceeding, as I remember it.

A. Yes—no, wait a minute.

Q. No, I will correct that. That is the date which it appears in an exhibit offered in evidence as Exhibit B-5 at the last proceeding, which is Mr. Grace's letter of June 21st, addressed to the Secretary of the Navy. It was approximately at that time, in other words? That is all I want to know?

A. Monday, October 8th, is correct.

Q. And is it your recollection that Admirals Griffin and Taylor and the Secretary of the Navy represented the Navy at that conference?

A. Yes.

Q. And, as I understand it, at that conference you submitted an estimate of $1,500,000 as representing the estimated cost of each of the destroyers,

and also asked for a fixed fee of $150,000 per ship; is that correct?

A. I did not submit any estimate, Mr. Brown. I proposed that that base price be agreed to, but no estimate was submitted. As a matter of fact, there never was any estimate made on those destroyers.

Q. Is the following quotation from your testimony at page 561 of the record referring to that conference with the Navy officials correct: "When the negotiations for the fee and the base cost were carried on, I asked for a fee of $150,000 for each destroyer, and that the base price be fixed at $1,500,000"? Is that correct?

A. That is correct.

Q. Then, as I understand it, after a considerable argument the fixed fee was fixed at the amount of $135,000 for each destroyer; is that correct?

A. Yes.

Q. And then after more discussion, as I understand it, you held out for $1,500,000 as the base price of the destroyers; is that correct?

A. That is correct.

Q. And is it your recollection that Admiral Taylor then said to Admiral Griffin, in effect, "They cannot possibly build them for a million and a half. You are not giving them anything"? Is that correct?

A. That is correct.

Q. And that the Secretary of the Navy then said, "All right, if that is your judgment, we will fix the base price at a million and a half," is that correct?

A. That is correct.

Q. And in saying "All right, if that is your judgment," as I understand it, the Secretary was refer-

ring to the opinion expressed by Admiral Taylor to which you have referred?

A. Yes.

Q. And, as I understand it, the other shipbuilders who were also present expressed the opinion that it would be impossible for Bethlehem to build the destroyers for less than the base price of $1,500,000, plus additions for changes and extras and wage increases; is that correct?

A. My recollection is that they did not think there was much, if any, chance of a saving.

Q. All the way through that conference, in other words, the shipbuilders, with respect to this base price of $1,500,000, thought that Bethlehem was trying to do the impossible; is that correct?

A. I think that is correct.

Q. Trying to summarize your testimony on this subject before the Committee of Commerce, without putting in extensive quotations as we did before, it is true, is it not, that in a proceeding before the Committee on Commerce of the United States Senate, which took place during February, 1918, you were testifying with respect to the destroyer contracts in controversy and the purpose and object of the half savings form of contract?

A. Among other things. It was general testimony that bore on the progress of the shipbuilding program.

Q. And, in explaining the basis of the price named in the form of contract adopted in connection with the destroyer contracts, it is correct, is it not, that in answer to the following question by Senator Vardaman you testified as follows: "Senator Vardaman: In the estimates you make you estimate that as about the cost of the ship? Mr. Powell: Yes, sir".?

A. Will you read the last?

Q. "Senator Vardaman: With the labor and material at the price today? Mr. Powell: Yes." You so testified, did you not?

A. May I see the rest of it? Yes, I so testified. I would like to see the context, though, to see how I qualified it.

Q. Yes. That was referred to in the previous proceeding also, Mr. Powell. All right?

A. Yes.

MR. BROWN: I would like to note on the record that this volume referring to the hearings before the Committee on Commerce of the United States Senate was referred to in the previous proceeding as Exhibit G-185. I am not offering it at the present time but it is referred to in the testimony and I would like to have it identified.

THE MASTER: It will carry the same identification number here.

BY MR. BROWN:

Q. It also appears at page 647 of your previous testimony as follows, in answer to my questions: "Q. According to your testimony in this proceeding, Exhibit G-185, with respect to the November (the word "November" should be "destroyer") contracts, and applying such testimony to the Fleet contracts, as I understand it, if Bethlehem had been required to name a lump-sum price for the contract ships, any price acceptable to Bethlehem would have been very substantially in excess of the price agreed upon in the base price contracts? A. It certainly would. We would not have accepted a fixed price for those destroyers. Q. The same thing applies to

the Fleet contract ships? A. Yes. Q. In connection with the destroyer contracts, you stated to the Senate Committee that if you had been forced to accept them on a lump-sum basis, it would have been approximately two million dollars instead of being $1,500,000 plus a fee of $135,000, or a total of $1,635,000? A. That was the same thing as telling them we would not have accepted a fixed price contract, because the Navy Department never in the world would have paid us $2,000,000." You so testified, did you not?

A. Yes.

Q. And that is correct— I mean your testimony?

A. Yes.

Q. With respect to the contracts now in controversy, namely, the Fleet contracts in issue in this proceeding, it appears that you testified as follows at page 654 of your previous testimony: "The Witness: I would not have taken the contracts on a fixed price basis. I so stated at conference after conference. That was one thing we would not do. Under those circumstances, I can't tell you what basis of fixed price they might have offered which might have caused me to change my judgment, but it would have been a whale of a big price." You so testified, did you not?

A. That is correct.

Q. And in referring to a price which "they" might have offered, you of course referred to the Fleet Corporation?

A. Yes.

Q. Again on the same subject, it appears that you testified as follows on pages 656 and 657 of your previous testimony, starting at the last question on page 656: "Q. Your estimates for lump-

sum contracts would have been entirely different from estimates for the purposes of determining the base price on the half-saving form of contract? A. I would not have taken it. Q. Your estimates would have been entirely different? A. I would not have made any estimates. If they had finally offered me a price so big that I could not help taking it, I would have said yes, probably." You so testified in answer to my question, did you not?

A. Yes.

Q. On the same subject, at pages 657 and 658 of the previous proceeding, it appears that you testified as follows in answer to my questions, beginning with the last question on the page: "Q. According to your information, were the estimated costs proposed by Bethlehem in the contracts in controversy intended by it to be the equivalent of lump-sum contract figures for like vessels?" A. They certainly were not under the conditions as they then existed." You so testified?

A. Correct.

Q. And it appears at pages 649 and 650 of your previous testimony that you testified as follows in answer to my questions: "Q. What you have said with respect to the increase in cost in connection with a lump-sum contract would have been because under that form of contract Bethlehem would have been required to assume the risk of possible contingencies? A. Under the fixed form of contract Bethlehem would have been required to assume probably all costs. The Fleet Corporation might have assumed the increase in wages. In fact, I think they did with some, some fixed price contract builders. They might have assumed other increased costs. Q. The necessity of taking care of possible contin-

gencies in the lump-sum form of contract is the reason for your statement in your letter of December 13th that it was impossible to submit fixed prices except upon a basis so far above estimated cost that any figure acceptable to Bethlehem would not be acceptable to the Fleet Corporation? A. Yes. Any figure that would have been acceptable to Bethlehem as taking account of the possible contingencies I knew would not be acceptable to the Emergency Fleet Corporation. Q. That was because of the necessity for taking care of possible contingencies under a lump-sum form of contract? A. Yes." You so testified, did you not?

A. Yes.

Q. Prior to the negotiations relating to the contracts in controversy, as I understand it, and commencing probably some time during 1915, inefficiency of labor, as compared with the pre-war efficiency, had been one of the principal factors in increasing cost of production, had it not?

A. I think you start a little early. I should say that we began to feel that in 1916, rather than in 1915.

Q. From some time during 1916 on that would be so, would it not?

A. That was so.

Q. The enormous increase in the labor forces commencing some time during 1916 and running on during the balance of that year and up to, we will say, the time of the negotiations in controversy, had been one of the principal causes for increasing inefficiency during that period, had it not?

A. That had been a cause. The more important cause during that particular period was that new shipyards were springing up and were taking away

our skilled labor. That was a more important cause during that particular period.

Q. And they were taking them away because of offering higher wage inducements, were they not?

A. Exactly.

Q. In other words, there was no uniform wage scale in existence at the various plants on either Coast?

A. No.

Q. It appears in your previous testimony, if I may be permitted to summarize it—it can be corrected by your counsel—that at Fore River the labor force of 4200 men employed on May 1, 1917, had increased to approximately 8,025 on September 8, 1917. If you have any doubt about that, I will refer to where I got that from in your testimony, pages 633 and 4. That is approximately correct?

A. I have no doubt that is approximately correct.

MR. BROWN: I have no objection to your correcting it if the figures are wrong.

MR. EVANS: If there is any question about it, we will be glad to see what the facts are.

BY MR. BROWN:

Q. Those forces at Fore River, as I understand your previous testimony, had increased to somewhere in the neighborhood of 11,000 on December 6, 1917, and to approximately 14,000 on January 1, 1919?

A. That is approximately correct.

Q. And this increase in labor force which I have referred to at Fore River, as well as the increase during the similar period at your other plants, whatever that increase was, represented, as I understand

it, green labor, entirely inexperienced in shipbuilding?

A. Yes, that is true.

Q. And it is true, is it not, that prior to November, 1917, there had been no governmental regulation of the wages of shipyard labor, and no uniformity as to wage scales in the various plants?

A. Practically true. At Fore River we went on the Navy Yard schedule of wages in August, 1917.

Q. For Navy work?

A. No, we put the whole Yard on it. You could not put half the Yard on one scale and half on another.

Q. When was that, in August?

A. In August, 1917—the agreement was made in August. It probably was September before we got the wages in effect.

Q. And during the period referred to, namely, during 1916, or part of 1916 and prior to the negotiations in controversy, there had been strikes and labor troubles at your various plants, had there not?

A. Of course, I had no connection with the other plants except Fore River. We had had some strikes and a great deal of difficulty with our labor.

Q. In your previous testimony at page 636 it appears that you testified as follows: "Q. There were also considerable labor troubles at the Bethleheni plants during 1917, were there not? A. Yes."?

A. Yes, that answer is correct.

Q. Then the following question: "Q. You had strikes at some of the plants which tied up operations for a period of several months, did you not? A. Yes." That is correct, is it not?

A. That is correct.

Q. And there was also a labor shortage during 1917; that is correct, is it not?

A. Yes.

Q. You testified to the same effect in the previous proceeding?

A. Yes.

Q. And that labor shortage during the period in question had prevented your various plants from being operated to capacity, had it not?

A. Yes.

Q. And the strikes, as I would assume, resulted from controversies as to wage rates and labor conditions, did they not?

A. Yes. There may have been in some of the yards also the union question came up, but not at Fore River.

Q. During that period it is a fact, is it not, that Bethlehem had no effective means of controlling labor, or inducing workmen to exert their best efforts in connection with the construction, on account of the confused—

A. Are you quoting from my testimony?

Q. I think you have that somewhere here. No, I had no quotation.

A. I should say, in a general way, that we did not have the effective means of controlling labor through incentive methods and through control of wages that we afterwards achieved under the War Industry Board.

Q. What I am trying to do is to summarize your testimony to show that the cause of the conflicting wage scales in the new Yards and the various things that have been referred to was that labor was a good deal upset during that period and there was really no effective way of controlling it?

A. That is entirely true. The things we could have done in raising wages would have ruined us on our fixed price contracts.

Q. And during the period to which we have been referring it is a fact, is it not, that chaotic transportation conditions had prevailed with respect to your ability to obtain shipping materials?

A. Of course, they were not so bad early in 1917, as I recall it, but they were getting continuously worse. The breakdown of the railway situation occurred, of course, after the Government took over the operation of the railroads and during the terribly severe winter of 1917-1918. That was when the railroad transportation completely broke down.

Q. Had not transportation conditions been very much upset during the year 1917?

A. In the early part of the year they were not as good as they might be, but they were not too bad. It was only after the War and later in the year that they became so terribly bad.

Q. And in arranging for the production and delivery of materials during that period to which we have been referring, Bethlehem had been on a competitive basis with other shipbuilders, had it not?

A. Yes.

Q. Then after the Fleet Corporation became interested in building ships, as I understand the situation, the Fleet Corporation and the United States, through its various agencies such as the War Industries Board, lent every possible assistance to the shipbuilders to build ships which were so urgently required by the Government, did they not?

A. I am just trying to get a proper picture. The War Industry Board considered the requirements of the situation as a whole. The Army's needs were

first, and they had the first call on anything that they required. Ships took a very high rating, and in accordance with that rating the War Industry Board allocated material to the shipbuilders' needs.

Q. Then some time in November, 1917, as I understand it, the Labor Boards, whatever the name was, that were established by the Government –

A. The War Industry Board.

Q. Well, the Labor Boards?

A. I did not mean that. It was the Shipbuilding Labor Adjustment Board.

Q. That Board began to take jurisdiction of wage rates and conditions of employment, did it not, in the effort to stabilize wage rates throughout the East Coast plants as well as the West Coast plants?

A. My recollection is that that Board was formed in the summer of 1917, that its first real active attempt to control wages was on the West Coast in December of 1917, and from that time on it rapidly took entire jurisdiction of wages in the shipbuilding industry.

Q. But in a general way it was contemplated that that was their object at that time, was it not? –

A. Yes.

Q. That they were endeavoring to stabilize wage conditions and wage rates at the various Yards, so as to enable the plants to operate most efficiently?

A. Oh, yes, that was their endeavor.

Q. I think it has already been covered, but of course it was understood by everyone that ships were very urgently required by the Government at that time? In fact, you have covered that already?

A. Yes.

Q. In stabilizing the wage rates and making the

conditions of labor satisfactory to labor, one of the principal inducements for labor going from one plant to another was removed, was it not?

A. Yes.

Q. As I understand it, the Government had also taken measures to exempt shipyard labor from the Draft, had they not?

A. Well, only certain classes of skilled shipyard labor.

Q. I do not know exactly how they operated.

A. That is, a man who was an ordinary laborer in a shipyard, who could be replaced by anybody who could lift a ten-pound weight, was not exempt. A man who was a skilled mechanic was exempt.

Q. Skilled or semi-skilled labor I suppose were the classes covered by the exemption?

A. Yes. We could get away with a good deal on the basis that they were skilled, too.

Q. And due to such exemption, or other causes probably in conjunction with that cause, it is a fact, is it not, that probably from 65 to 70 per cent. of Bethlehem's total labor force by February 1, 1918, consisted of men within the Draft ages?

A. I should think so.

Q. And there was also a Service Department established by the Fleet Corporation, was there not, for the purpose of enabling the shipbuilders to obtain an adequate supply of labor?

A. For that and for other purposes, the building up of the morale of labor.

Q. In each of the contracts—I think I am right in stating this; it is certainly in practically all of them, though I don't know whether there might be one or two exceptions—there are the following provisions, which appear as Paragraph XII of Con-

tract No. 177, which is in the list of exhibits filed as a part of the pleadings in the case, at page 138: "The owner will, in its discretion"—the owner being the United States or the Fleet Corporation, I take it, we will say the Fleet Corporation—"the owner will, in its discretion, use its influence and such powers as it may have by law to assist the contractor (which was Bethlehem) to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract, and will, in its discretion, also use its influence and powers to secure for the contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract." That, in general, was what was contemplated, was it not, at the time of these negotiations?

A. Yes.

Q. And the same with respect to labor, Paragraph X of the same contract reads: "The contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the owner. The owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The contractor will promptly notify the owner of any labor difficulties. That, in a general way, was what was contemplated at the time of the contracts?

A. Yes.

Q. And it is a fact, is it not, that you testified

as follows in the previous proceeding, commencing at page 651, just a little below the middle of the page: "Q. (By me) It is a fact, is it not, in connection with the Navy contracts of December 6, 1917, in which the half-saving form of contract was adopted, there had been no allowance made for anticipated decrease in the efficiency of labor during the construction period of those destroyers? A. Well, that is a rather difficult question to answer. I have gone in a number of times to the subject of the way that estimate for the destroyers was arrived at. The estimate was a figure which we had to shoot at that in my judgment gave us a reasonable profit or a chance of making a substantial saving. To make that saving, we had to operate more efficiently than what we might say was average efficiency under conditions that then existed. If we were going to make that saving, we had to overcome any increased cost due to decreased efficiency, and increase efficiency beyond what it was at that time. Q. In other words, you contemplated under the destroyer contracts that there would be a possible saving on account of your ability to make labor more efficient during the period of construction of those destroyers than it had been during the period of 1917 when labor conditions were more confused and upset? A. Labor conditions were not more confused and upset in 1917, but I believed we could get control of our labor and so handle it as to materially improve the situation unless conditions broke more seriously than they did. If the Army had doubled, if strikes had broken out, if labor troubles increased—if all those things had happened, labor might have got completely out of hand. We were just taking a plain chance. Q. In view of the methods that had been

developed by you in connection with training labor, and the different aids that you had with respect to labor, such as the exemption clause and standardization of wages, you contemplated that it would be possible for the Bethlehem Company to make a saving in connection with the destroyer contracts by making labor in connection with such contracts more efficient than it had been? A. I intended to work my head off and have all my managers work their heads off to make labor more efficient. I believed we had outlined methods that if things did not go too badly would result in increased efficiency, but what was really going to happen I didn't know any more than anybody else." You testified to that effect, did you?

A. Yes.

Q. And that testimony is equally applicable to these contracts now in controversy, is it not?

A. Yes.

Q. As a matter of fact, Bethlehem succeeded, as I understand it, in its efforts to increase the efficiency of labor at its various shipyards, with the exception possibly of the Harlan plant, from early in the year 1918, did it not?

A. We began to get better control of our labor from early in 1918, and we did improve the efficiency of our labor at all of the plants, and improved it some at Harlan, although less at Harlan than at other plants.

Q. Mr. Powell, I am going to use an expression that you used in the previous proceeding. Did Mr. Brown think you were crazy in believing that it would be possible for Bethlehem to make any savings on the basis of the prices that were finally

agreed on in connection with these contracts in controversy?

A. Yes, sir, and did not mind telling me so, either.

Q. It appears at page 552 of your previous testimony, in answer to questions by Mr. Evans, that you testified as follows: "Q. You say that Mr. Brown thought you were crazy? A. Yes, sir. Q. You thought that by good management and good luck there was a possible saving here under this form of contract? A. Yes. Q. And it was your job to get it out? A. It was my job to get it out. Q. He could not see it that way? A. He could not." You so testified, did you not?

A. Yes.

Q. At the previous proceeding, in answer to questions by Mr. Evans, it appears that you testified—I am referring to pages 549 and 550—that in submitting these estimates to the Fleet Corporation you figured that there was a probability of effecting a saving which would be sufficient to handle or to take care of war and excess profits taxes amounting to sixty per cent., and still net the Bethlehem Company approximately ten per cent. of its estimated base prices, did you not?

A. I do not believe I stated it just that way, Mr. Brown.

Q. Did you intend to make that statement? I was doubtful about it myself.

A. Not exactly in that form, because I think, if I recollect correctly, I said—

Q. May I read you what you said and then you can comment on it?

A. Yes.

Q. (Page 549) "I figured that if Bethlehem got

fairly reasonable breaks, if things did not go against us very badly, that by exercising exceptionally good management, by using all of the expedients I believed were possible at that time in training labor and training a supervisory force, in offering special incentives to our supervisory force, that we could improve on conditions such as we allowed in getting this average estimated price, to such an extent that we could cut these costs below this estimated cost to the place where our half of the savings would wipe out the excess profit taxes. At that time the excess profit tax was, I think, around sixty per cent. and we had enough work in our yards as they were then situated so that any additional work we took fell completely in the excess profit bracket, so that I had to figure on a saving that would handle that tax."

A. Yes.

Q. Is that correct?

A. That is exactly correct.

Q. Then you figured, as I understand it, on a saving which would be sufficient to enable the Bethlehem Company to pay these taxes amounting to sixty per cent. and still net Bethlehem its fixed fee named in the various contracts; is that correct?

A. That is correct. I want to simply amplify that by saying that I never sat down with a pencil and paper and made any detailed figures to see that that particular result was going to be arrived at. When I used the expression "figured" I simply meant that I roughly estimated that that is about where we might come out if we got the best break possible.

Q. That is understood. Just for purposes of illustration, in order to make it clear to the Master,

we will assume, if you will be so good as to do it, that we are dealing with a ship the estimated cost or base price of which is $2,000,000, and there is a fixed fee of $200,000, or approximately 10 per cent. of the estimated cost. Now, as I understand it, in the case of such a ship you figured that there was a reasonable probability of making a sufficient saving to take care of War and Excess Profit Taxes amounting to sixty per cent. of earnings, and net Bethlehem the fixed fee of $200,000? You have so testified, have you not, just now?

A. Yes.

Q. Now in such a case, in order to net Bethlehem $200,000, in other words the fixed fee, after paying taxes amounting to sixty per cent. of net earnings, Bethlehem's total profit would necessarily be $500,000, would it not?

A. I guess if I had ever calculated it out that way I would not have thought I was going to get the full excess profit tax.

Q. Just for the purposes of this illustration, would you be good enough to follow me?

A. I follow that.

Q. And that is correct, is it not?

A. I think that is about correct.

Q. In other words, if Bethlehem's share of the earnings and its fixed fee were $500,000, sixty per cent. of $500,000 would be $300,000, leaving the fixed fee of $200,000 which you expected to get?

A. I would have required on that basis a saving of nearly $700,000, which was far in excess of anything we ever dreamed of.

THE MASTER: I do not quite understand your formula. Do you figure the $500,000 a-

the saving or the combination of saving and fixed fee?

MR. BROWN: Combination of saving and fixed fee.

THE MASTER: So that the saving would be $300,000?

MR. BROWN: The saving under that illustration would be $300,000—their share of the saving.

BY MR. BROWN:

Q. In order to make Bethlehem's share of the saving in such a case $300,000, the total saving would have to be $600,000, would it not?

A. That is about right, arithmetically.

Q. So that in such a contract, as I understand it, you figured on the reasonable probability of total savings being in the amount of $600,000, did you not?

A. Never.

Q. What?

A. Never. I told you that I never made any estimate, never took a piece of paper and pencil and figured it out; that what I wanted to do was to get as much saving, which at the outside might have been 25 per cent., from our estimate, half of which would have gone toward paying off these excess profit taxes. I do not remember that I knew exactly what the excess profit taxes were. I certainly did not know exactly how they would be applied to the Bethlehem situation, because they afterwards were applied quite differently than anything I could have supposed at that time, and my idea was to cut into this excess profits tax to the maximum by making all the saving that we practically could. I dis-

tinctly do not want to convey any impression that I ever sat down and said "We are going to make just so much saving here that it will wipe out a sixty per cent, excess profits tax," because I did not do it.

Q. Mr. Powell, I do not want to press you unduly on the subject, but it would have been a very simple matter to determine, by a very simple mathematical computation—and I might say that otherwise I would not have attempted it—to show what you would have had to make in the way of savings in order to net your company its fixed fee of $200,000 under the illustration that I am giving you, would it not?

A. Oh, yes, it would be a very simple calculation if I had taken the trouble to make it.

Q. And the example I have referred to was the case, or a similar case, in which Mr. Harry Brown advised you that, in his opinion, you were crazy in believing that you could effect any saving whatsoever against base prices; is that correct?

A. Yes.

Q. As a matter of fact, what War and Excess Profits Taxes has Bethlehem paid on the amount of profits which it has already received under these contracts in controversy?

A. I have not the slightest idea.

Q. Haven't you the slightest idea?

A. No.

Q. Bethlehem, of course, files consolidated returns for all the companies?

A. Yes.

Q. And did during that period, did it not?

A. Yes.

Q. In other words, when you were negotiating

you knew a consolidated return would probably be filed, as it was in the past, with respect to these companies, did you not?

A. No, my recollection is that that tax bill that gave that right was passed at a later date.

Q. I am wrong about when the consolidated return was filed.

A. That came afterwards and changed the situation very materially.

Q. You never have been advised as to what taxes Bethlehem actually has been required to pay in connection with the profits already received in these transactions?

A. No.

Q. It appears that you testified at the previous proceeding, beginning at page 551, in answer to Mr. Evans' question, as follows: "Q. If the War had continued during the entire construction program, what effect, in your opinion, would that have had on your savings? A. The savings would have been quite different and much less than they were, Q. Do you think there would have been any savings? A. Yes; I do—will you strike that out? Mr. Brown: Do we have to have that stricken out? Mr. Evans: No, leave it in, and then correct it. The Witness: Please correct my answer. I think, if the War had continued, there were so many factors that might have come into the situation that any answer I might make to that question would be purely a guess." You so testified?

A. Yes.

BY THE MASTER:

Q. The Equity Rules require the Master to ask questions himself, and I have been derelict in your case. I am going to perform my duties, I hope

rather shortly, but two or three questions I would like to put to you concerning several matters in my mind. In the first place, as I understand it, in reference to this half-savings contract, you are the originator of the idea?

A. So far as applied to shipbuilding contracts, yes. It is nothing new in other forms of contracting.

Q. And the first time that you applied that form of contract was with the 85 destroyers for the Navy?

A. That is correct.

Q. And you discussed the form of contract with Mr. Piez, I understood you to say?

A. Yes.

Q. And he was in favor of it because of the incentive feature?

A. Of the incentive feature and of the difficulty in making a fixed price contract that would be equitable both to the Fleet Corporation and to the contractor, because of the numerous unforeseeable circumstances that would surround the performance of the contract.

Q. That only applies to the fixed price contract?

A. Yes.

Q. The pliability of the cost-plus contract, however, would cover that feature?

A. Oh, yes.

Q. So that the half-savings contract added another feature to the cost-plus by giving an incentive?

A. Giving an incentive to perform as cheaply and as efficiently as practical.

Q. And carried with it the expectation that a benefit would arise by reason of those facts to both parties?

A. Yes.

Q. In discussing it with Mr. Piez, did you dis-

cuss with him what would be a fair basis for the saving in making the estimate, on what percentage the estimate should be made to have a fair base for that incentive?

A. I have no recollection of it, and I very much doubt that I ever went into that detail with him. We never reached that point, because we finally did arrive at an agreement with Admiral Bowles before we ever got to a place where that would have been necessary.

Q. I thought possibly in discussing the matter with Mr. Piez you had demonstrated to him the wisdom of at least a certain percentage being in there as the incentive.

A. No, I think not. What I demonstrated to him, in accordance with my recollection—and I have no distinct recollection of any particular date when this was done—was that the general form of contract was the fairest form that we could find, under the conditions, to both parties, and that there must be enough probability of a reasonable saving in the base price that was fixed, or otherwise there would be no incentive. That is, if I went away from the Emergency Fleet feeling, "Well, I will get my fee anyhow, but there is no possibility of making a saving", one of the principal advantages of that form of contract was lost. If I went away with the feeling, "Well, now, there are a hundred things that may happen and I won't get a saving, but if I do the best I can and my people do the best they can and if we get the breaks, then we will make a saving, and we will make enough of a saving to make it worth while".

Q. And in order to make it worth while it had to be something reasonably substantial?

A. It had to be reasonably substantial.

Q. Because, in order for your organization to get the benefit of it, you had to hold out to them something in the nature of a dollars and cents proposition?

A. Exactly.

Q. And that was based on your estimate of what your savings would be on all your contracts?

A. Yes.

Q. I understood you to say yesterday that with an honest and efficient estimator there was a possible variance from the mean of 50 per cent. up and 25 per cent. down?

A. Under the conditions that existed in 1917, yes.

Q. So that, with that variation in mind, in order to be reasonably sure of a saving you would have to add 50 per cent., would you not, to the expected cost of the ships?

A. Well, yes, if you were going to fix it so you were not taking any of the risk at all, but of course we never expected to be put in that position. I recognized at all times that if things went against us we would never get a nickel of saving and we might very substantially overrun those base figures. But it was war times and we were taking so many chances that one more didn't make much difference, and after all I was vitally interested in getting home to my people the fact that we were working for ourselves, so I could get the best there was out of them. Now if they thought there was going to be a saving, whether it ever happened or not, the ships would be so far along before any of us knew that I would have gotten most of the benefit out of it, whether we ever got any money out of it or not—

I mean the benefit so far as performing the work was concerned.

Q. Still, you had to deal with your own organization fairly and you had to give them some reasonable basis for your statement?

A. Absolutely; I must be convinced in my own mind that I was making a true statement to them, or a great part of the effect of it would have been lost.

Q. Unquestionably, so that you have had some honest basis in your own mind for the fact that there was to be a saving?

A. Yes.

Q. And in order to be anywhere near safe you could not go below say 25 percent., that is, your differential must be at least 25 per cent. in the base figure above what you expected the boats to cost?

A. Let me put it the other way: if I accepted the curve that Mr. Brown made and that has been talked about so much, as the average estimate, we will say, that would be arrived at if ten independent people had considered all of the conditions and put down their figures—if I considered that as the average, then I had a 25 per cent. break in my favor if everything went right. Now I was satisfied to play with a 25 per cent. break that might be in favor of me against a possible 50 per cent. break that might be against me. We at least had our fee, we were at least protected, so that if the worst came to the worst, I was not going to ruin the company, which a great many shipbuilders did by taking unfortunate and improper contracts with the Fleet Corporation. There are a lot of wrecks along both seaboards that resulted from people who had not had experience

doing just that thing. I had safeguarded the company so that if the worst came to the worst, we would make a little profit, and if the best happened we would make a very satisfactory one.

Q. So, then, as I understand it—let me see if I am correct—your basis for submitting the figures that you finally agreed upon with Admiral Bowles, below which you would not go, was a figure which, taken from the detail that resulted in the chart that Mr. Brown made, gave you the hope of a 25 per cent. saving?

A. I think that is a very fair and accurate statement of the situation.

Q. It was, as I understand it, more or less an over-all, so far as you were concerned; you had no more reason for believing it was 25 than 30 or 20?

A. Not the slightest.

Q. And therefore, when it comes to a question of this breakdown, it did not make any difference where you put that $10?

A. No.

Q. That was put there, really, to make it something for the other people to shoot at?

A. That is it exactly.

Q. And the $10 did not stay there anyhow?

A. Did not stay there anyhow.

Q. And you did not expect it to?

A. No, I knew it would not.

Q. I assume that you approached the figure for the Navy on the 85 destroyers in about the same way?

A. Very much the same way. As a matter of fact, up to almost the close of the negotiations with the Secretary of the Navy, we thought that those boats would be built on a cost and percentage basis.

MR. EVANS: Straight cost-plus basis.

THE WITNESS: Cost-plus basis. It was only on the Friday night before we settled with the Secretary that I had this thought on the sleeper going up to Boston, and the next morning I went in and talked to our general counsel, who was a very wise man about many things beside the law, and threshed it out with him, got my ideas in order, went back to Washington and put it up to the people in the Navy Department on Monday, sold them the idea that it was a good thing, and we settled the contract and the amounts that day, so there wasn't any estimating done on those boats, I am sure.

BY THE MASTER:

Q. No, I understood that. Can you tell us, if you know, what was the percentage of saving on the Navy contract?

A. I cannot tell you. You see, I left Bethlehem before those things were completed. As a matter of fact, there was an adjustment made when the final settlement was worked out between the Navy Department and Bethlehem, and I had an interest in the account and I received a check for it, but I never asked the details. I was terribly busy at the time and it did not make any particular difference to me anyhow. It was settled and done with and I don't know.

Q. You have not yet received a check on these contract ships?

A. No, sir.

Q. So you haven't any more as to that, have you?

A. No, sir, and I haven't spent it yet, either.

Q. I suppose Mr. Geiss would know what the

percentage of savings would be on the destroyer contract. I won't go into that. The answer is that you do not know?

A. I do not know.

Q. Just let me ask you this question. As I understood you, it was your expectation that the saving, if any, would be found in the item of labor, primarily?

A. Primarily in the item of labor—labor and management, of course.

Q. Management, of course, would be reflected in the item of labor?

A. Yes.

Q. The other items, as you figured your base, were sufficiently fixed, or at least the variations in the group would be such for and against each particular item, that there would not be any substantial saving in material?

A. There was very little chance of any saving, and that item particularly might have gone against us. I should have said that on the material end there was a very small chance of a small saving and a considerable chance of quite a large loss.

Q. I understood you to say you had not ascertained what the total saving was on the contracts in dispute?

A. No, I have never heard.

Q. Have you been interested enough to inquire where the saving was—assuming there was a saving, as I understand there was—whether it was in labor, or materials, or what?

A. I am very much interested in it. As a matter of fact, I never have had the time to sit down with the people that knew and go into it. I have no doubt they would have very gladly told me all the details if I had ever had the time and the oppor-

tunity to ask. I am perfectly sure that most of the saving was in labor. I would not have any hesitation in making that statement without knowing any more about it than I do.

Q. In view of the fact that you told us yesterday that so many of the estimates on which contracts for ship buildings were made resulted in a very substantial loss on the fixed price contracts, I was wondering if these contracts might not be a helpful cost clinic for future estimating?

A. Well, the conditions were so extraordinary that I do not know that there is very much to be gained from that.

Q. Except that if you have the worst conditions and get a result, is it not fair to assume that under the best conditions you could improve on that result?

A. Yes.

Q. However, the answer is you do not know?

A. I do not know.

FURTHER EVIDENCE IN BEHALF OF THE GOVERNMENT

ABE M. LISSON, having been duly sworn, was examined and testified as follows:

BY THE MASTER:

Q. Will you give your full name and address?

A. Abe M. Lisson, 38 Cherry Street, Lynn, Mass.

BY MR. BROWN:

Q. Were you previously engaged in the employment of the Fleet Corporation?

A. Yes; sir.

Q. During what period?

A. From about the beginning of November, 1921 until May, 1923.

Q. In what capacity?

A. As auditor in charge of cleaning up all unfinished contracts that the Fleet Corporation had at that time for construction work.

Q. And that related to all claims under these contracts now in controversy, did it not?

A. Yes.

Q. You have had no connection with the Fleet Corporation since May, 1923?

A. That is right.

Q. Where do you live at the present time?

A. In Lynn, Mass.

Q. Will you tell us whether, during the time of your connection with the Fleet Corporation, in connection with the settlement of Bethlehem's claims, or the attempted settlement of such claims, there was a dispute as to the rates which had been used at the various Bethlehem Shipyards in computing the estimates which they had submitted to the Fleet Corporation with respect to the contracts in controversy?

A. There always was a dispute as to the base rates.

BY MR. WOOD:

Q. By that you mean the base rates under the contracts?

A. Under the contracts, yes.

BY MR. BROWN:

Q. What was the nature of that dispute as to the base rates under the terms of the contract?

A. In line with our work, we wanted to check the base rates as actually used, and we never could check them because we could not get any figures.

Q. As I understand it, the contracts authorized the application of Navy Yard rates; is that the fact?

A. That is right.

Q. To put it in the form of an example, if I may, without saying that these figures were the figures actually used, as I understand it Bethlehem contended that the estimates in controversy had been based, we will say, on a labor rate of 40 cents per hour and the Fleet Corporation took the view that, instead of using a base rate of 40 cents per hour in connection with its estimates, Bethlehem had actually used a rate in excess of that, or, we will say for illustration, 50 cents an hour; is that correct?

A. That is right.

Q. And that was material, as I understand it, in connection with determining the amount of increased labor cost to be added to the base prices named in these various contracts; is that right?

A. Yes, sir; that is correct.

Q. And in connection with that controversy, as I understand it, it became material, from the viewpoint of the Fleet Corporation, to obtain the actual estimates used, or supposed to have been used by Bethlehem in connection with its estimating for the contracts in controversy; is that correct?

A. Yes.

Q. Did you have any conference with the representatives of Bethlehem with respect to that controverted question?

A. Yes, sir, a number.

Q. And did you have a number of conferences with Mr. H. G. Smith and Mr. Geiss with respect to that subject?

A. Yes.

Q. Would you say that you had seen both of those gentlemen on a great many occasions at various places and had discussed this question with them?

A. At a good number of places, we not only discussed that question but numerous others.

Q. All the other controverted matters that arose?

A. Yes.

Q. At any rate, you were in very frequent contact with both Mr. Smith and Mr. Geiss?

A. Yes.

Q. And during what period was that?

A. Starting, I should say, with about April of 1922, right straight through until March or April of the following year.

Q. And Mr. Smith was in charge of the negotiations of the adjustment of these claims on behalf of the Bethlehem Companies at that time, was he not?

A. Yes, sir.

Q. Will you tell us, in substance, what was said with respect to any requests made upon either Mr. Smith or Mr. Geiss with respect to the submission of its estimates and what was said in reply to any such requests?

MR. EVANS: I do not want to expect too much, but if you can give us dates or any particulars, I would appreciate it.

MR. BROWN: Try to do that.

A. I may not get these dates consecutively, but I will try to give you as many dates as I can, or as near as I can. I believe in perhaps March of 1922, we had a large conference with the Labor Adjustment Bureau, of which Mr. Aron was the Chairman, and at that time the base rates were discussed exten-

sively, that is the only thing that was taken up, and when they were asked for the estimates, the answer was that there were no estimates, that they were made in such a hurry that they were on the backs of envelopes or a piece of scratch paper, or something of that sort.

BY MR. BROWN:

Q. Can you say whether Mr. Smith and Mr. Geiss were present at the conference to which you refer?

A. Yes, both.

Q. And the request was made by you at that time for these estimates?

A. No, the request was made by—as I recall it, I believe the request was made through the Chairman, Mr. Aron, by Mr. Adamson.

Q. And both Mr. Aron and Mr. Adamson were representatives of the Fleet Corporation, were they not?

A. Yes.

Q. Do you remember who made answer to that request on behalf of Bethlehem?

A. I could not say positively. It was either Mr. Geiss or Mr. Smith.

Q. Either Mr. Geiss or Mr. Smith?

A. Yes.

Q. And just what was said, so far as you can remember, in answer to that request?

A. Due to conditions at the time the contracts were negotiated, there was not time enough to make up an estimate, just had to do it as quickly as possible because the Fleet Corporation wanted some action.

Q. Just to give the Master the proper perspective with respect to this disputed question, what would you say with respect to the importance of

this disputed question as compared with the other items that you were endeavoring to settle with Bethlehem?

A. That was the most important matter we had to settle.

Q. And was it a matter which was constantly arising between the Fleet representatives and Bethlehem?

A. It always cropped up at every conference.

Q. Can you remember other occasions on which Bethlehem representatives were requested to furnish these estimates?

A. At the meeting held in August, general meeting held in August, I think the same question came up again. In fact, I know the same question came up again and the same answer was given.

Q. At the time to which you refer were Mr. Smith and Mr. Geiss present?

A. Yes.

Q. And a similar request was made at that time?

A. Yes.

Q. And what was the answer at that time?

A. Practically the same thing; there were no estimates.

Q. What did the Fleet representatives state with respect to their impression as to what rates had been used, as to what those rates had included?

A. It was always the impression of most of the Fleet representatives—

MR. EVANS: That is objected to.

THE MASTER: No.

BY MR. BROWN:

Q. I am talking about what was said, if anything, to the Bethlehem representatives with respect to what the Fleet People guessed had been included

in these estimates with respect to the base rates?

A. A higher rate than the Navy Yard rates.

Q. Was there anything said about the supposition being that Bethlehem had made allowances in these estimates for anticipated wage rate increases during the contemplated period of construction of these ships?

A. On the East Coast it was considered that they used the Navy Yard rates plus the first Macy award.

BY MR. WOOD:

Q. Considered by whom and told to whom?

A. Considered by everybody that had anything to do with the various plants, with the audit of the Bethlehem contracts.

Q. And told to whom?

A. It was told to me, told to Mr. Brown, told to about everybody that listened.

Q. By you gentlemen inside the Fleet organization?

A. That is right.

THE MASTER: As I understand it, Mr. Brown, the purpose of this investigation of this witness concerning his request for the rate of wage used in making the estimate that was submitted in the letter of December 19, 1917, is to establish the fact, for the purposes of your case, that the inquiry was made concerning the estimate, that the statements were made which the witness has testified to, and the reasons given in those statements for not producing the detail of that estimate; that is the purpose of this investigation?

MR. BROWN: That is correct, if it is under-

stood that the inquiry with respect to rate relates to the request for estimates.

THE MASTER: For estimates on which the estimates that were finally given to the Shipping Board were made, and the estimates that you refer to are the estimates in the letter of December 19, 1917?

MR. BROWN: The estimates that I refer to are the estimates as to how Bethlehem arrived at the base prices finally named in the different contracts.

THE MASTER: But that is included in the letter of December 19, 1917?

MR. BROWN: They were refused, but these people were not concerned so much with that price as the price that was actually used. There was no issue of fraud at that time at all. There was this contest about the base rate and our people were anxious to find out what base rate had actually been used by Bethlehem in connection with these estimates in controversy.

THE MASTER: The purpose of it is clear, and within the line of that purpose the Master will permit it to come in. Otherwise it would seem to have been irrelevant.

BY MR. BROWN:

Q. I just want to note that Mr. Smith and Mr. Geiss, to whom you have been referring, are in court at the present time.

A. Yes.

Cross Examination

BY MR. EVANS:

Q. The only thing that you were concerned about was labor rates, was it not?

A. I was concerned about the entire contract at all times, not only labor rates. The labor rates were one of the items I was concerned with.

Q. I mean it was only in connection with the question of the labor rate that you were interested in the basis of Bethlehem's estimates?

A. Yes.

Q. And that is what you stated to Mr. Smith and Mr. Geiss, that you wanted to check up the estimates that they used for their item of labor, direct labor?

A. That is right.

Q. And they told you that what estimates they had had been made on scrap pieces of paper which had not been retained and were not then available?

A. That is right.

Q. Do you know the difference between a labor rate and an earning rate?

A. Never heard of the term earning rate.

Q. You never heard of the term earning rate?

A. Unless it means the rate a man actually is paid.

Q. What is the difference between the rate a man is actually paid and a labor rate?

A. A labor rate for a certain operation might be a dollar and he might only actually be paid eighty cents, I suppose.

Q. And vice versa, the labor rate might be fifty cents an hour and a man working piecework might make a dollar an hour?

A. That is right.

Q. So your labor rate would be fifty cents and your earning rate would be a dollar as to that man?

A. That is right.

Q. I have not used an unusual term when I speak of earning rate, have I?

A. I never heard it used before.

Q. You never heard it used before?

A. Not an earning rate.

Q. What is the term that properly expresses what I have defined and described as an earning rate?

A. Actual hourly rate paid, or piecework rate paid to the employee.

Q. And when you speak of an average rate in a plant, how do you describe it, when you want to get the average paid to all labor, both those working on an hourly basis and those working on a premium or piecework basis?

A. Both classes of labor together?

Q. Yes.

A. Take the total earnings and divide it by the total number of hours.

Q. And what do you call the result?

A. Average hourly rate, if that is what we are looking for.

Q. Average hourly earning rate, is it not?

A. I have never used the word "earning". I have always used the term average hourly rate paid, that is all.

Q. Average hourly rate paid; that would not be the same as the average labor rate in a plant, would it?

A. Not necessarily.

Q. Not if you had men that were working on piecework, is that correct?

A. Yes, sir.

Redirect Examination

BY MR. BROWN:

Q. There are certain refinements with respect to asking legal questions that a witness is not always familiar with. I do not want Bethlehem to have any opportunity to do anything other than meet this issue absolutely squarely that we have raised, and therefore I do not want to have a distinction made between a request for a rate and a request for estimates unless there is some propriety in the making of that distinction.

MR. EVANS: Now just a moment. I have asked him no such question and he has made no such answer in reply to it.

MR. BROWN: You have asked him whether his request was for the earning rate.

MR. EVANS: I did not at all. You do not seem to understand very well.

BY MR. BROWN:

Q. What I am directing your attention to is this, whether or not the request to which you have referred in your direct testimony related to Bethlehem's estimates or to an earning rate or a labor rate?

A. The requests were to the requests used in the estimate that was presented to the Fleet Corporation at the time of the contracts.

MR. EVANS: I object to going into this any further. It is not redirect examination. The

witness has given a perfectly intelligible answer.

MR. BROWN: I do not care who answers the questions, but I am entitled to have this cleared up.

THE MASTER: I thought it was clear. Usually the number of times that a witness is entitled to repeat is three and this is the second time. Once more we will take it and then we are through. If you think it is not clear, ask it again.

BY MR. BROWN:

Q. What you requested, or what the Fleet representatives requested, as I understand it, were the estimates which Bethlehem had actually used in arriving at the base prices named in these contracts; is that correct?

A. Yes.

Q. There is no question about that?

A. Not at all.

Recross Examination

BY MR. EVANS:

Q. Base prices for what? Base prices for labor, wasn't it?

A. Yes.

Q. For labor?

A. Yes.

Redirect Examination

BY MR. BROWN:

Q. But the estimates which you requested were estimates which related to the method by which they had arrived at this base price, were they not?

A. That is right.

THE MASTER: And the witness was told they did not have them.

THE WITNESS: That is right.

MR. BROWN: They had to get the whole estimate to see what was the labor rate estimate. Here are Mr. Geiss and Mr. Smith and I do not think they are going to take the stand, and that is why I want the question cleared up.

Following an informal discussion as to the question of further oral testimony on behalf of the Government, the Master stated:

The Master understands that yesterday Mr. Brown closed the Government's case in chief on oral testimony, except for the testimony of the witness Lisson, who has just been on the stand, and the testimony of Mr. Radford, if he can be obtained, and in that event the record testimony of Mr. Radford will be withdrawn, so far as the direct examination in the Government's case in chief. That, I understand, Mr. Brown, is a correct statement of your position?

MR. BROWN: That is a correct statement, with this possible exception, that Mr. Radford will be used in rebuttal of the defendant's case and I expect to call him in rebuttal as I did at the last hearing.

MR. EVANS: I will serve notice now that if you call Mr. Radford in rebuttal I shall insist that his testimony be confined to rebuttal.

MR. BROWN: I called him in the last proceeding and I expect to call him again in rebuttal if I can get him here.

MR. EVANS: I insist on putting you on notice that if you call him in rebuttal I am going to insist that his testimony be confined to rebuttal. I may say, for the information of the Master, that what was rebuttal in the last case is not rebuttal in this case, because the case has been tried by the Government in quite a different way.

THE MASTER: My understanding yesterday, Mr. Brown, was that the testimony of Mr. Radford as offered at the previous trial was offered by you as a part of your case in chief.

MR. BROWN: No, sir, it was after Mr. Piez's testimony, in rebuttal.

THE MASTER: No, not at the last trial but at this trial, that you were offering Mr. Radford's testimony from the record of the other trial, in which it was offered in rebuttal, as a part of your case in chief before me.

MR. BROWN: That is correct.

THE MASTER: That was my understanding and that is the way it was taken and that is the way it is in.

MR. BROWN: That is correct.

THE MASTER: If you do not want it in that way, then Mr. Evans is entitled to know it, because he serves notice on you that it will

not be accepted in that form in rebuttal, and that if it is going to go into rebuttal, then your case will have to be held open.

MR. BROWN: After Mr. Piez's testimony is introduced by the Bethlehem counsel, there will be no question but that everything that Mr. Radford said will be in rebuttal, and I accept service of the notice which Mr. Evans has given and I still offer Mr. Radford's testimony in our direct case, with the privilege, if I can, of obtaining him in rebuttal, and if his testimony is not proper in connection with rebuttal, we will gladly run that risk.

THE MASTER: That I understand to be the situation. Such testimony as you take from him, if he comes here, as I understand it, is going to be offered in rebuttal and rebuttal only, and that you withdraw any of his testimony in chief as it is now on the record; is that correct?

MR. BROWN: I do not want to put my foot in it in this case.

THE MASTER: I just want to warn you that, on Mr. Evans' statement, he is entitled to hold his position and if you cannot justify Mr. Radford's oral testimony in rebuttal, it will have to be either out or taken as direct evidence—that is, all in chief.

MR. EVANS: I am perfectly willing to do this. Mr. Brown has offered his evidence in chief and that may be received as though he had so testified in this case. Now if there is something that Mr. Brown thinks is proper rebuttal in his case here and he wants to call Mr. Rad-

ford in rebuttal, then of course I have no objection; but in that event I shall insist that his testimony be confined to rebuttal testimony, and I understand that his testimony given at the last trial is in this case in chief and offered in chief.

THE MASTER: It was so offered yesterday.

MR. BROWN: It is offered in chief.

THE MASTER: I may say, for the benefit of both of you, that in view of the absence of Mr. Schwab and Mr. Piez, as I understand neither of them is to be offered as a witness in person before the Master, I regard Mr. Radford as one who should be produced in this case, so that the whole case can be developed from both sides, and I think that Mr. Brown ought to know that that is the Master's point of view, that I think Mr. Radford ought to be here in person if it is possible to obtain him.

MR. BROWN: Anything you think is going to be helpful to your decision of the case I will gladly comply with.

THE MASTER: Not so much to help the Master, but for the benefit of the case, so that the case will have the appearance of having at least some one of the major representatives of the Government in this transaction before the Master, because I have had the benefit of the personal appearance of those who represented Bethlehem in this negotiation, and there may develop out of their testimony certain questions that the Master might like to ask some one of the representatives of the Government.

EVIDENCE ON BEHALF OF BETHLEHEM (Cont'd.)

JOSEPH A. HONSICK, recalled:

BY MR. EVANS:

Q. At the previous hearing in this case you produced an Exhibit which you prepared or which was marked and offered in evidence as Government Exhibit G-46, the paper which I hand you, did you not?

A. Yes, sir.

Q. That Exhibit, as I understand it, was made up for the purpose of showing the comparison between the actual cost and the estimated base cost on all of the contract ships; is that right?

A. I presume that is what it might have been used for, but I did not prepare it for that purpose.

Q. Let us see what you did do. You took the actual cost of the boats, separating them by contracts, didn't you?

A. Let me look at the Exhibit. I prepared it two years ago and I don't recall every figure.

Q. Did you read over your testimony of the last trial? Don't you recall what this exhibit was?

A. I read it over quite a long while ago.

Q. Isn't it a fact that this exhibit represents a calculation showing the actual cost of the boats which Bethlehem built under these contracts, separating them by contracts?

A. Yes.

Q. And in order to get a fair comparison between the actual cost and the estimated cost which appears in the contracts themselves, you have deducted from the actual cost wage increases, haven't you?

A. That is right.

Q. And you have deducted changes and extras and any other deductions which were necessary in order to bring back the actual returned cost of these boats in line with the estimated or base cost under the contracts so that it would be an absolute comparison, haven't you?

A. Yes, that is right.

Q. And the actual cost that you took for the purposes of that calculation was the amount of cost which had been conceded by the Government in the stipulation which was filed in this case as Exhibit A, am I right?

A. It was in that stipulation, yes.

Q. So that, for instance, on contract 178, you have not included as an item of cost the cost of replacing defective work on the Cabrille, have you, because in the original stipulation that was disallowed?

A. I think the item of the Cabrille was handled as a separate matter and was settled as a separate matter outside of this cost.

Q. Yes, but I am asking you whether in making up your transcript showing the actual cost of the three tankers built at Harlan's under contract 178, you included as an item of cost any part of Bethlehem's claim for replacing the defective work on the Cabrille. You didn't do that, did you?

A. I don't think it is included.

Q. Because at the time you made this up the Government had disallowed that as an item of cost and that was one of the items in dispute?

A. You say we disallowed it but, on the other hand, there was some adjustment made.

Q. But the adjustment was made by stipulation

of counsel after you had made up this exhibit; isn't that right?

A. I think that is when the stipulation was made.

Q. So, if I am right in my recollection, manifestly the items of adjustment is not reflected as an item of cost in here?

A. I don't think the Cabrille, the condemned work, is in there. I am not absolutely sure but I don't think it is in there.

Q. At any rate this exhibit was made up before the hearings before Mr. Roberts, wasn't it?

A. Yes.

Q. And has not been altered since then as a result of any agreement or stipulation that was made at those hearings?

A. Not that I know of, no, sir.

Q. Just to make sure that it is clear what you have done here, take the second contract which you analyzed, which is contract 178, covering three tankers at Harlan's, and that was the one which included the Cabrille, wasn't it?

A. I don't remember.

Q. You don't know?

A. I don't remember exactly what hull number it was and what contract it was. I remember the Cabrille item of repairs.

Q. Well the Cabrille was a 7500 ton tanker built at Harlan, wasn't it?

A. I presume it was if you say so.

Q. Let me see if I am right in understanding this. You have taken the various items of cost which went into the actual construction of these ships, breaking them down according to material, labor, operating expense, administrative and general expense, and depreciation; am I right?

A. Yes.

Q. And then you have made such adjustments as were necessary in order to reduce the actual cost to a basis comparable with the estimated or base cost in the contracts; is that right?

A. Yes.

Q. And that adjusted cost is the cost which appears on each one of these sheets entitled "Averaged cost per vessel as originally contracted for"?

A. Yes, sir.

Q. So that, referring again to the three tankers at Harlan, according to your calculation, the average cost of these three vessels as originally contracted for was $1,675,014.05; is that right?

A. Yes, sir.

Q. And, if I am right in saying that the Cabrille was one of those, then that actual cost would be increased over the amount which you show by a proper adjustment by reason of the subsequent allowance of part of the labor cost on the Cabrille; am I right?

A. Yes.

Q. And what I have said regarding contract 178 applies to all of the contracts which you have analyzed in exactly the same way?

A. Yes, sir.

Q. Except that I notice you have no analysis of contract 465. What was your reason for not including a similar analysis of contracts 465?

A. I don't know why I did not prepare 465 definitely now, but I don't think there was so much dispute as to the price of 465 or the savings were limited or some such contention was made, for which reason we left out 465.

MR. EVANS: I offer this Exhibit in evidence.

(Admitted without objection as Exhibit B-32.)

Cross Examination

BY MR. HALLETT:

Q. That document which has just been offered was made up as the result of your calculations, as I understand it, drawn from the final bill submitted by Bethlehem Shipbuilding Corporation and designated before as Exhibit G-44 and also the tabulation of the Union Plant costs previously designated as Exhibit G-45?

A. Yes, sir.

MR. HALLETT: I offer those two Exhibits.

(Received as Exhibits G-44 and G-45.)

Note: Exhibits 32, G-44 and G-45 are to be treated as physical exhibits.

THE MASTER: The Master would like, for the purpose of the record, to have counsel agree upon a calculation of the percentage of savings on the ships in dispute here by contracts, the amount shown by each contract separately. There is no occasion to show it on each ship. I think if you group them under the contract it would be sufficient, but I would like the tabulation to become part of the record of just what the percentage of savings is between the contract price under each contract and the actual stipulated cost of the ships under that contract.

MR. EVANS: You want that figure on the basis of the actual cost not reduced to terms of the original cost as stated in the contract?

THE MASTER: Well, you may have it both ways.

MR. EVANS: We cannot give it to you exactly because there are contentions here which affect that question one way or the other.

THE MASTER: There is a question of law on the wage item that has to be disposed of before you get that. Why not let each counsel give me that tabulation based on their contention?

MR. WOOD: Bethlehem offers the evidence of Mr. Charles M. Schwab, as given before Mr. Roberts, at the previous hearing, as reported in the transcript of that hearing between pages 711 and 736, both inclusive, as part of the record in the present proceeding.

MR. BROWN: We have no objection.

THE MASTER: The Master understands that the testimony of Mr. Charles M. Schwab given in person before Mr. Owen J. Roberts, as Special Master and Referee, is being offered before the Master in lieu of the oral testimony of Mr. Schwab, who would otherwise appear personally before the Master, and that this method of taking his testimony in this record is not objected to by the Government.

MR. BROWN: That is correct.

THE MASTER: The Master will accept his testimony in that form and direct that it be inserted in the testimony at this place in the record in the case of Bethlehem. It is to have the same force and effect, so far as the record is concerned, as though Mr. Schwab had appeared and testified in person.

(Testimony above offered in evidence is as follows:

"CHARLES M. SCHWAB, having been duly sworn was examined and testified as follows:

BY MR. WOOD:

Q. Mr. Schwab, will you recite the circumstances which led up to your acceptance of the position of director-general of the Fleet Corporation?

A. I received a telegram from Mr. Hurley about the middle of March 19—

Q. March or April?

A. Perhaps the middle of April. My memory is not so good about the dates,—asking me to come to Washington. I hadn't the slightest idea what he wanted. I went down to Washington and met him with Mr. Piez, Mr. Colby, and a man by the name of Mr. Logan the next morning at the Emergency Fleet Corporation offices. They bluntly told me the situation. They were very much alarmed over the destruction of ships and the lack of progress being made at the shipyards, and as Mr. Hurley expressed it, they wanted to get the services of some captain of the industry who stood well before the country for progressiveness and energy, and asked me to join the Emergency Fleet Corporation as director general. I was greatly surprised, and argued with all of them, Mr. Colby especially, and Mr. Hurley. I did not want to undertake such a thing because I was already overloaded with the work I was then doing for the Bethlehem, and coupled with the fact that I had charge of all the work I had undertaken with the Allies, I felt I was doing my duty in every way to my country, and to ask me to undertake anything more was more than I could do, and above all, I feared that

such an undertaking, notwithstanding the request of the President and others, because we were such a large factor in the shipbuilding industry at Bethlehem—that I would open myself to such attacks in the years to come that would make my later years unhappy, and in addition to that, I gave other reasons why I thought I ought not to go; that my relations with the President were not of the best; my policy with reference to labor was the very opposite of what his was; I had known the President for many years when he was president of Princeton, and governor; that we had not agreed upon such things; and that I felt I had to have a free hand and did not think I would get it. I urged that and many other reasons. Mr. Colby, Mr. Piez, and Mr. Hurley persisted, and I said finally that I would consult my associates. I sent for Mr. Grace and Mr. Powell and other associates of the Bethlehem Steel Company, and I may say that as a unit they were opposed to it; that I ought not to do it. I went back to Washington on Tuesday following the Sunday, fully prepared to refuse it, not to undertake it. Mr. Grace was with me but he did not attend the meeting. They led me to believe that they had discussed the matter at great length with the President; that the President was insistent upon my coming; that he and the rest of them felt it was a duty to do so; and like most people, and like I illustrated by the cow story, I was persuaded, and I said I would come, but said, 'I will not undertake it under any consideration unless such regulations and stipulations are made as will relieve me of any possibility of doing business with my own concern'. I have been in business 50 years, and I have been director and manager of a great many companies for 40 years, and I have the record of be-

ing able to say that I never sold or had any business for any company which I controlled with any other company in which I had an interest, and I vigorously determined that under no condition would I enter into any undertaking where such a condition of affairs would arise, but under those conditions, in which they assured me I would be thoroughly safeguarded, I accepted, conditioned on the personal approval of the President of the United States with them, with the result that I assumed that he knew all the details, and I have no reason to believe he did not. I did not go over with him in detail, but the friendly manner in which he approached me and approved of my decision more than ever confirmed me that the matter could be adjusted along the lines I desired. So I accepted and assumed the responsibilities of the position.

Q. Did you during the time that you were director general refrain from representing the Fleet Corporation, or have anything to do in any manner with business dealings with Bethlehem?

A. I had not been there very long until I realized that the important thing in the Fleet Corporation, considering the time and circumstances, was not the greatest engineering ability of Mr. Piez and the other officers, not the great works under the management of Mr. Powell and the rest of them; that it was a bigger and broader question; that what it needed was somebody that would have the public confidence and the confidence of the press of the country to enthuse everybody connected with the Fleet Corporation to the completion and hastening of their task. When I have been asked as to what was the most important help I had, I have always said the attitude of the press, because from the moment I

went down there I had the press to a unit throughout the United States with me, and I always believed that the best work is done under the spirit of approval and approbation. So I felt that was the important thing in the Fleet Corporation, and I felt, knowing myself, that I had the qualities that would enable me to do that part of the work better than Piez or anybody else. So therefore I decided and said to them, 'That is what I am going to undertake. I am going to devote myself to that broader question'—what I termed human engineering. I did not think the price of ships or anything of that sort was of any moment compared to this bigger and broader question. Therefore, during the whole of my time as director general of the Fleet Corporation, I said to Mr. Piez and his associates that all questions of general management were going to be left to them, and I would take care of the other business, and I have no reason to feel that I made anything but a wise decision in that respect, so that at no time, under any conditions, did I meet, converse with, talk, bargain, or do anything with Bethlehem or any of the others.

Q. As I understand you, you thought one of the biggest parts of your job was to instill enthusiasm into all persons associated with the shipbuilding program, from officers and employees of the Fleet Corporation down to the works managers and men in the yards? Is that right?

A. Quite so.

Q. What did you do in order to accomplish that, Mr. Schwab?

A. I visited not only once but several times most of the shipbuilding yards in the United States from Maine to California. I personally met with all the

managers, superintendents, and many, many of the workingmen at noon time meetings. As you know, I established a headquarters here in Philadelphia, where I thought I would be nearest to the greatest number of shipbuilding plants and employees.

Q. I think you gave us an illustration the other day, Mr. Schwab, of how you worked and how the others worked, by saying that on some trip you made to San Francisco to stimulate business, while the others were busy talking to managers and presidents of these plants on technical matters, you spent your time out in the yards with the men in various groups?

A. That is true.

Q. That is illustrative of what you regarded as the most important task that confronted the Fleet Corporation?

A. Quite so.

Q. What success did you have in that?

A. Well, I flatter myself that we had very great success, because I think the records will show that we had little if any labor difficulties of any kind. Where we did have, they were easily regulated. I established the system of presenting three flags to the shipyards that made the best record, and I would attend the ceremony of the hoisting of the flag. I adopted methods of that kind, feeling that the great backbone of workingmen was more important to getting ships than any other one question.

Q. Were labor conditions bad at the time you took hold?

A. Yes.

Q. Was labor more or less unruly?

A. Yes.

Q. Filled with bad spirit?

A. Yes.

Q. Without asking you to be immodest, did you overcome that situation?

A. I think I helped it very materially. That is my own opinion, and I think that was the general accepted opinion.

Q. You say you did not concern yourself with contract prices or technical matters. Was there any part of the constructed program with which you did concern yourself?

A. Yes. I had very frequent conferences. One of the things I found was that it lacked the broader aspect of the whole situation. Nobody seemed to know what the United States required, how many ships of each character. One man whom I met almost daily at the War Council was General Goethals, and I consulted with him as to the real requirements of the United States, the number and character of ships we wanted, whether for transportation, whether for fuel, or for what purpose. So I concerned myself with that aspect of the case in a very broad general way.

Q. To find out what kind of ships were needed to be built?

A. Yes. We were building a lot of ships that I felt were useless and of no value, and I was endeavoring to see if we could correlate the shipbuilding industry so as to give the United States the best results.

Q. Prior to your appointment as director-general, were you a member of the Board of Directors of the Bethlehem Shipbuilding Corporation?

A. I am not sure of that. I think so. I am on all the boards, most of the boards of the subsidiary companies, but I don't remember. The record will show it.

Q. Do you recall whether you resigned from the Board of the Bethlehem Shipbuilding Corporation?

A. I don't recall.

Q. Mr. Robison says he thinks that is in evidence.

A. I don't know. I think I did what my legal advisors told me to do, but what it was I don't remember.

Q. Were you ever a member of the Board of Trustees of the Fleet Corporation?

A. Never.

Q. I call your attention to Exhibit G-160, a memorandum signed by you and addressed to Mr. Hurley, dated October 2nd, 1918, which reports an agreement with Mr. Farr for modification of certain contracts with the American Shipbuilding Company on the basis of 10 percent profit. Do you recall whether, prior to the writing of that letter and in connection with the original contracts, you had any knowledge from any source as to the purposes of the American Shipbuilding Company as affecting the profits that were to be made?

A. This letter might seem inconsistent with what I have already said about having no activity with the business of the corporation, and therefore requires my telling you as well as I can remember a story with reference to this. Mr. Hurley, the president of the Board, concerned himself very much with everything regarding publicity of the activities of the Fleet Corporation. That was something in which he had a great interest, and which he gave personal attention. I did not bother much with that. When I got the report of the American Shipbuilding Company and discussed it with Mr. Hurley and with others—

Q. That is, when you got the report referred to in that memorandum?

A. The report referred to here, the balance sheet of their earnings and the newspaper comments. Mr. Hurley was very much exercised about it. I knew the chief owner, Mr. Mather, who has been a life long friend from boyhood, of the American Shipbuilding Company, and I also knew Mr. Farr very well, and I suggested that I take the matter up with them. I know I signed this letter. To the best of my knowledge and recollection, Mr. Cuthell wrote it for me and he wrote it for Mr. Hurley, I think. It was my impression that he wrote it for Mr. Hurley to use as publicity matter if he wanted to.

Q. The letter itself recites that you sent for Farr—

A. It recites all this correctly, because Mr. Cuthell thought it was put in the best manner for Mr. Hurley to use if he wanted to use it. As far as any negotiations with Mr. Farr on his contract, other than our general conversation I had none.

Q. Had Mr. Farr or Mr. Mather told you that they only expected to make 10 per cent. out of those contracts?

A. Yes.

Q. Were you aware of that fact at the time you sent for Mr. Farr?

A. As a matter of fact, I perhaps would not have given it any consideration if the question had not arisen in the way it did.

Q. Was there any policy of the Fleet Corporation to limit the profit to 10 per cent.?

A. My policy with the Fleet Corporation might have been regarded as an extravagant one. It is one that I have practiced all my life, that the question

of the cost of ships in a crisis such as we faced was of little consideration compared with our ability to get ships. We built hundreds of ships that were of no value to us, but it was wise to keep up the spirit. That was the primary question in my mind, to get ships, to get ships. I always likened it to the fact that on the battlefield millions of shells were fired off. That was the broader question that I looked at; it was the broader view that I took.

Q. It appears that subsequent to this conference of October 2nd a contract was negotiated with the American Shipbuilding Company modifying the contract referred to in your memorandum of October 2nd, and to which modification that memorandum relates. I ask you whether you personally had anything to do with negotiating the details of that contract and the modifications?

A. To the best of my recollection, I know nothing about it.

Q. Mr. Schwab, at the time that you wrote this memorandum, did you have any knowledge generally as to the kind of ships that were being built by the American Shipbuilding Corporation?

A. I did.

Q. The character of their work?

A. I did.

Q. Were those ships comparable either in kind and character of work or in the time necessary for their completion with the ships that were being built by Bethlehem or other shipbuilders?

A. No. Indeed, it was a very grave question whether we ought not to discontinue building those ships.

Q. Will you tell us in what respect they differed?

A. The ships in the Lake were built of such a size that they were not of any use to us. It was really an assembling job. It was not a shipbuilding job. They could turn out a ship in a few months if necessary to do so, because it did not embrace any of the bigger problems of the difficult and more complicated ships. They had been building these ships for years on the Lakes for use on the Lakes. I doubt whether those ships could carry enough coal to cross the sea. It was a question of morale whether we ought to stop building them.

Q. Have you any information as to the comparative length of time it took the American Shipbuilding Company to turn out one of its ships as compared with the tankers and cargo vessels?

A. I can't tell you that. I should imagine, making a rough guess, they could turn out five or six to one.

Q. At any rate, there was a much greater turnover?

A. That I must say to you with frankness. When there was any discussion of this ten per cent. matter, that was not the thing that came up at all. I had not urged 10 percent; it was suggested by Mr. Farr. The question of price did not concern me at that time at all, with either one.

Q. Assuming that 10 per cent. would be the proper margin of profit for the American Shipbuilding Company, would you say that it would be adequate for old iron shipbuilders doing the class of work they were doing, either Bethlehem or Newport News or anyone building boats, not assembling them, but turning them out much more slowly?

A. Certainly not.

Q. Why not?

A. Because one required great capital, plant investment, and expert technical ability, while the other was an everyday turnover.

Q. One had a rapid turnover while the other had a slow turnover?

A. Yes.

Q. Do you recall when you retired as director general?

A. Approximately, yes.

Q. About when was it?

A. I think it was about December, 1918.

Q. During the time that you were director general, did you have any knowledge of Bethlehem's probable profits or of the costs of the ships being built by Bethlehem?

A. Mr. Wood, I have repeated, and I say now, that I kept myself entirely aloof from anything connected with Bethlehem. I knew nothing of their profits on ships. I did not meet its officers unless it was casually, and knew nothing while I was director general about it. I was super-careful to have no connection.

Cross Examination

BY MR. BROWN:

Q. Mr. Schwab, this transaction with the American Shipbuilding Company has taken place a long time ago, and I know you have been very busy on other divers things and not been giving much attention to this case, but are you correct in your statement that you had no negotiations with the American Shipbuilding Company representatives with respect to any contracts they entered into with the Emergency Fleet Corporation?

A. I don't remember any.

Q. It appears on page 490 of the Concession of Documentary Evidence that you wrote to Mr. Farr under date of September 27th, 1918 stating in the second paragraph of that letter, "You will remember, on the occasion of my visit to Cleveland, at which time we made our last contract with you, I questioned you as to the amount of profit you would make and you assured me it was very moderate and reasonable." It is true, is it not, that you did go to Cleveland and did discuss the last contract made with the American Shipbuilding Company?

A. No, sir; it is not true. I went to Cleveland several times and visited the Farr Shipyard many times. I am inclined to think that letter perhaps was written by Mr. Cuthell also, but this is certain, I had no negotiations with Mr. Farr with reference to his contract for ships at any time.

Q. That applies with respect to any contract that was entered into between the American Shipbuilding Company and the Fleet Corporation?

A. It does.

Q. You think that whoever wrote that letter which you signed and to which I have called your attention was mistaken in saying that on the occasion of your visit to Cleveland, at which time the Fleet made its last contract with the American Shipbuilding Company, you questioned Mr. Farr as to the amount of profit that the American Shipbuilding Company would make, and Mr. Farr assured you it would be very modest and reasonable?

A. Mr. Piez, Mr. Cuthell, and myself usually traveled together. When we did go together, Piez and Cuthell would meet with the officers of the company, and make any business transactions that would

be necessary. That would be likely to occur. I was with them in Cleveland when it was done, but I did not do it.

Q. I am merely endeavoring to refresh your recollection as to matters which have taken place a long time ago.

A. My memory is not so good.

Q. I have before me what purports to be a copy of a letter of September 29th, 1918 addressed by M. E. Farr, President, American Shipbuilding Company, to Edward N. Hurley, Esq., in which he states: "At the time Mr. Schwab made his trip to the Great Lakes, the matter of profit was discussed, and I assured him that it was the purpose and policy of the company to limit its profit on ships contracted for by the Emergency Fleet Corporation, to 10 per cent. About two weeks later, we again discussed the subject in Philadelphia, and Mr. Schwab stated at that time that he had advised President Wilson that he thought the shipbuilder should be entitled to ten per cent. profit". Does that statement in that letter accord with your understanding?

A. No sir; and furthermore I never saw the President from the day I took office until I went with him to Europe for the Peace Treaty, and so I could not have reported anything like that to the President.

MR. EVANS: Does that purport to be a letter from Mr. Schwab?

MR. BROWN: This is a letter from Mr. Farr to Mr. Hurley.

THE WITNESS: Naturally, I talked to Mr. Farr when I met him about my correspondence.

Naturally, I did, but in the general way I testified to.

BY MR. BROWN:

Q. But you do not remember any conversation with the President?

A. I told you I did not see the President from the time I took office until I went to Europe with him.

Q. Is it possible that at that original conversation the question of profits was discussed and you so expressed yourself?

A. Never. The question was never discussed.

Q. Mr. Schwab, how much experience had you as a shipbuilder or in the shipbuilding business prior to October, 1918?

A. When I bought the Bethlehem Steel Company in 1903, I sold it again to a lot of people who had made a collection of shipyards, and took in pay the bonds for same. The company failed, and I was obliged to foreclose the bonds, and as a result, acquired these shipyards. After I acquired the shipyards, I naturally followed the business from a business point of view very closely, I knew what was going on. I followed their financial and other business with the same care I did the steel company, and that was my first experience in shipbuilding. Then I was associated with Admiral Bowles in the furnishing of battleships to Argentina. As one of the witnesses testified, they lost so much money in Fore River that I was obliged to take over the Fore River Shipbuilding Company to keep my faith with Argentina.

Q. Do you think you are qualified to compare the ships constructed by the American Shipbuild-

ing Company with the ships constructed by the Bethlehem Company?

A. I am. I know enough about it.

Q. In your conversation with Mr. Farr leading up to the confirmation of the last contract, he assured you that the price named in that contract was a reasonable one?

A. I don't think that there was any such discussion. I just said to Farr, "You must adjust this in line with what you and Mather said to me." I don't think we had any discussion as to the question of the ships being smaller than ours or anything like that.

Q. I am referring to the negotiation of the original contract, not to its revision.

A. I had nothing to do with it.

Q. But in this letter offered as G-160, page 493 of the Concession of Documentary Evidence, it is stated in a letter signed by you: "The price fixed in the contracts between the American Shipbuilding and the Fleet Corporation was agreed to only after extended negotiations and as to the last contract made in May, 1918, the price was fixed after extended conferences not only with Mr. Farr but with all of the other Lake shipbuilders and was consented to by me only upon the assurance by all of them that the price was a reasonable one." Does that accord with your understanding?

A. Well, I don't know. I have told you the exact circumstances of that letter.

Q. May I ask you, because I forget exactly what you did say, whether or not that paragraph I have read does accord with your understanding of what took place?

A. My general understanding of what took place

with Mr. Farr was that I asked him to revise—I did not say 'revise your contracts', but to put this matter in shape, "That will confirm what you and Mr. Mather told me about it." He said he would do so, and that ended my connection with it.

Q. This was a rather important matter to the American Shipbuilding Company, which had the effect, according to this letter, of reducing the price to such a figure that the Fleet Corporation would be saved in the neighborhood of $12,000,000. I ask you, in view of that circumstance, whether you did not consider this question of sufficient importance to give it your personal attention, and really understand the statements which are made in this letter of October 2nd, 1918?

A. I understood the statements very well, but I say this, that Mr. Piez and Mr. Cuthell, who devoted themselves to that part of the business, were so much more and better qualified to do it than I, that I was quite content to rest upon what they would do.

Q. Didn't you demand a full explanation of this transaction, which resulted, according to your letter, in saving the Fleet Corporation $12,000,000.?

A. No.

Q. When this letter was prepared, did you ask Mr. Piez or Mr. Cuthell the reasons for their insistence upon revision of the American Shipbuilding contract?

A. I don't remember that I did.

Q. Do you think it likely that you would, in view of the fact that the reduction was to result in a saving of twelve million dollars?

A. My recollection is that I said to them, "This

is what Mr. Farr and Mr. Mather said to do. Now you attend to the details."

Q. Did you realize that you were insisting on a reduction which resulted in a net amount of saving, although practically none of the contract ships contracted for with the American Shipbuilding Company had been completed, and that the revision was based entirely on profits made by the American Shipbuilding Company in connection with requisitioning ships?

A. Mr. Brown, you must remember, that Mr. Farr suggested that he only wanted the 10 per cent. profit and I was not insisting on their doing something that they had not already said they would do.

Q. How do you account for the statement in that letter that Mr. Farr demurred at making any reduction?

A. I don't know. I have told you the purpose of the letter.

Q. I suppose the American Shipbuilding Company understood that the purpose was to reduce their savings so that they would obtain a just and reasonable compensation?

A. I suppose so.

Q. You understood, did you not, that this reduction was being sought and insisted on by the Fleet, although the American Shipbuilding Company had not had an opportunity to see what profits it was going to obtain from its contract ships, but merely because their annual statement showed a very large profit in connection with requisitioning ships?

A. I can't answer that. All I know is that I saw the big profits, and Mr. Farr said that they would change their contract as it was eventually done. The

reasons and the psychology I can't give you, because I don't remember.

Q. If you will look at the contents of the letter on page 492, it states: "I immediately sent for Mr. Farr and demanded that he consent at once to a reduction in price on all of his contracts. He claimed that the large profits were made out of the commandeered ships and that only a few of his direct contract ships had been completed and delivered during the fiscal year covered by the report. I pointed out that this argument had little weight because his contract ships were more expensive to us than the commandeered ships and that his material and labor protections were such that very likely during the coming year his company would make a great deal more than they did during the past year." I ask you if that does not accord with your understanding of what took place.

A. That is my recollection of it.

Q. Wasn't Bethlehem Steel Company in exactly the same position in that its prices for requisitioning ships were considerably less than the prices which had been agreed upon?

A. I knew nothing about Bethlehem Steel Company's ships.

Q. Not knowing that, did you tell Mr. Piez, who was supposed to look after all matters pertaining to Bethlehem, to make a careful check to see that Bethlehem would not be caught in the same position that the American Shipbuilding Company had been caught?

A. No question about Bethlehem was ever taken up with Mr. Piez at any time.

Q. You did not say to Mr. Piez: "My hands are off any contracts, but we are insisting on reduction

because of enormous profits that have been made in requisitioning ships, and contract ships are even in excess of those".

A. I certainly did not think any such statement was necessary, and I did not do it.

Redirect Examination

BY MR. WOOD:

Q. Mr. Schwab, Mr. Brown asked you a rather involved question toward the close, based, as I understand it, upon the assumption that it must have been obvious, if the situation recited in this letter existed in connection with the American Shipbuilding contracts, it must exist in connection with Bethlehem. If that was obvious, it would be just as obvious to Mr. Piez and Mr. Cuthell as to you?

A. More so.

Q. Was Mr. Mather present at this conference reported in this memorandum of October 2nd?

A. I don't think he was.

Q. So that when you have referred in your testimony to what Mr. Farr and Mr. Mather had told you about the 10 per cent. profit, you must be referring to something they had told you prior to the conference of October 2nd?

A. Of course.

Q. That may have been and very probably was at the time that the contracts were negotiated with Farr in May or whenever it was, at the time you and Piez and Cuthell were out there?

A. Yes.

Q. I also understand you, while that information was communicated to you at the time by Mr.

Mather and Mr. Farr, you did not personally participate in the negotiation of those contracts?

A. At no time.

Q. Were these American Shipbuilding contracts that were revised as a result of a meeting referred to in the memorandum of October 2nd on the same basis as contracts with other Lake yards?

A. All I know is what I heard Piez and the other gentleman say.

Q. Those contracts were not revised contracts with other Lake yards that had been made simultaneously and on the same basis?

A. I can't tell you.

Q. At least, if they were, you had nothing to do with their revision?

A. I can't tell you.

Q. At least, if they were, you had nothing to do with their revision?

A. No.

Q. Did you have anything to do with any revision of contracts?

A. No connection. I did not desire Mr. Piez in any manner to interfere with the work I was doing, nor did I in any manner desire to interfere with the work he was doing. I perfected an organization to help me with my work, and he did the same with his. We went along in complete harmony and understanding. I do not say that we did not talk over various phases of our constant association. Nevertheless, the facts are as I have stated.

Q. Mather was an old long-time friend of yours, and Farr also was a man with whom you were very well acquainted?

A. Many years, yes.

Recross Examination

BY MR. BROWN:

Q. Mr. Schwab, in April or May, 1918, Mr. Piez and you had the assistance in the Fleet Corporation of persons who were experienced in shipbuilding, did you not?

A. Yes.

Q. It is a fact, is it not, that even after extended conferences with the American Shipbuilding Company leading up to the consummation of this final conference, and even though you had the assistance of such expert advice, or even though Mr. Piez had the assistance of such expert advice, you were nevertheless, or Mr. Piez was nevertheless forced to rely upon the assurance of Mr. Farr that his prices were reasonable, in finally consummating the contract?

A. Well, Mr. Piez could answer that better than I, since he made the contract.

Q. Unfortunately Mr. Piez is gone. I of course assume that this letter, having been signed by you, would relate to a matter you were fully acquainted with, and the letter states on page 493: "As to the last contract made in May, 1918, the price was fixed after extended conferences not only with Mr. Farr but with all of the other Lake shipbuilders and was consented to by me only upon the assurance by all of them that the price was a reasonable one." That accords with your understanding?

A. Yes.

Q. So that in spite of this assistance you had from your technical experts in the Fleet Corporation, when it came down to finally fixing a figure, you were forced to rely upon the assurance of Mr.

Farr that the price named in his contract was a reasonable price?

A. I couldn't say. All that I was concerned with was that what Mr. Farr and Mr. Mather said to me would be carried out in the contract ultimately made."

MR. WOOD: Mr. Charles Piez, who testified at the previous hearing before Mr. Roberts, being outside the jurisdiction of the court and beyond the reach of subpoena, Bethlehem offers the testimony given by Mr. Piez orally before Mr. Roberts in the previous proceedings, as recorded in the transcript between pages 667 and 711, both inclusive.

THE MASTER: The Master understands that the Government makes no objection to the offer of Mr. Piez's testimony as part of Bethlehem's case in this form?

MR. BROWN: I would prefer to put it this way, that the Government takes the position that under the law, as it understands the law, Bethlehem has a right to offer Mr. Piez's testimony, as they have offered it, and the question of the Government with respect to that offer is immaterial.

THE MASTER: As I understand the stipulations of counsel and the rules of law applicable to the joint proceedings before me as Special Master and Referee, Bethlehem would have the right to offer testimony given by Mr. Piez in the former hearing before Mr. Roberts in the form in which it is offered here, and it is therefore accepted for the purposes of this record with the same force and effect, in view

of the fact that Mr. Piez is not available for service by subpoena, as though Mr. Piez had testified before me here.

(The testimony above offered in evidence is as follows:

"CHARLES PIEZ, having been duly sworn, was examined and testified as follows:

BY MR. WOOD:

Q. Mr. Piez, what is your present occupation?

A. Chairman of the Board of the Link Belt Company.

Q. How long have you occupied that position?

A. Four years.

Q. At the outbreak of the war what were you?

A. President of the Link Belt Company.

Q. How long had you occupied that position at that time?

A. About 20 years.

Q. The Link Belt Company, as I understand it, is engaged in the manufacturing business?

A. Manufacturing and engineering.

Q. Are you an engineer?

A. Graduate of Columbia.

Q. In connection with your activities with the Link Belt Company and perhaps before, have you engaged in that profession?

A. I was chief engineer of the company for a while.

Q. Were you connected with the Emergency Fleet Company during the war?

A. Yes, sir.

Q. When did that connection begin and in what capacity were you connected with the Fleet Corporation?

A. My first connection with the Fleet Corporation was as a member of the Committee of Three appointed by Mr. Hurley to investigate the progress of work in the shipyards. That was in September, 1917, and we made our report. Early in November I joined the Fleet Corporation permanently as vice president, and later on as vice-president and general manager.

Q. Do you recall when you were appointed general manager?

A. I followed Admiral Harris as general manager. He resigned the 17th of December, and I think I was appointed that day or the next.

Q. It was about the 15th of November when you became vice president?

A. About that.

Q. Were you also a member of the Board of Trustees?

A. For a time, until Mr. Schwab joined us.

Q. When did you become a member of the Board of Trustees?

A. Soon after my election as vice president.

Q. In January, 1918, you were vice president and general manager and a member of the Board of Trustees?

A. Yes.

Q. What were your duties as vice president during the period from your first appointment in November until you also became general manager?

A. Complete executive charge of the affairs of the Fleet Corporation with the exception that I lacked the power to negotiate contracts, which was vested in the general manager.

Q. Then, when you became general manager on the 17th or 18th of December, the power to negotiate contracts was also vested in you?

A. Yes.

Q. Prior to that time, although the power to negotiate was vested in the general manager, were you required to approve the contracts?

A. Yes, sir. I had the power to sign them. I was the only officer outside of Mr. Hurley that had that power.

Q. Having the power to sign, you had the power to disapprove as well as to approve and sign?

A. Yes, sir.

Q. Mr. Piez, I want to ask you whether in your opinion, in the latter part of 1917 and the early part of 1918, it was impracticable to estimate within a reasonable percentage what would be the actual cost of construction of ships to be contracted for or being contracted for by the Fleet Corporation?

A. In my opinion, it was absolutely impossible to properly estimate the cost of any construction, including ships during that period—accurately to estimate.

Q. That is your opinion now?

A. Yes.

Q. Was that your opinion then?

A. Yes.

Q. Can you tell us why?

A. We had a very conspicuous example at Hog Island. Estimates for Hog Island were prepared, I think, in June, which amounted to $27,000,000. When I came with the Fleet, we had spent about fifty million. The yard cost about sixty or seventy million to complete.

Q. That was one of the first situations that came under your observation?

A. Yes, it was a very important situation, too.

Q. Had you previous to that had some experience of your own as to the uncertainties of estimates?

A. I was at that time president of the Electric Steel Company of Chicago, in addition to my duties as president of the Link Belt Company. We found it necessary to extend our plant. Mr. Frank Chase was the industrial architect and engineer. He made us a price of $150,000 for the extension. My boy came down to me in December and said it looked as if the actual cost would be in the neighborhood of $385,000, which proved to be so and we did put in considerable additional money.

Q. When was it that the original estimate had been made?

A. I think about August or September.

Q. Of 1917?

A. Yes.

Q. In December you learned that the cost would be more than double that, as it proved to be?

A. Yes.

Q. You say the name of the man who made the estimate was what?

A. Frank D. Chase.

Q. Was he a competent industrial engineer?

A. A very competent man, yes. He is still in business.

Q. After you took up your duties as vice president of the Fleet Corporation, in addition to the Hog Island situation, was there any other situation that came under your observation that illustrated the difficulty of estimating within a reasonable percentage the actual cost of construction?

A. I don't recall any at this time.

Q. Some wooden ships had been contracted for?

A. In the case of the wooden ship program, I

think contracts were let before I entered the Fleet Corporation, of some 180 on the Atlantic Coast. The contract was let by the Fleet Corporation as I understand, for 300,000 per Hull. Of those ships built on the Atlantic Coast, not a single one cost less than $475,000.

Q. What were some of the elements that made it impracticable to estimate the actual or probable cost within a reasonable amount?

A. Conditions were all adverse to stability. Every possible condition was adverse to it. Labor was uncertain. A very considerable part of labor had been withdrawn into the Army, and the men that were left were incompetent or inexperienced, and the pressure for output was very severe so that all the industries were running at top speed, and it was absolutely impossible to get any efficiency out of labor. Material costs were going up.

Q. It appears in evidence that with the exception of a contract dated December 31st, 1917, for the construction of two or three troop ships on the basis of cost-plus, all of the contracts entered into between Bethlehem and the Fleet Corporation were on the basis price plus a fixed fee plus a percentage of savings. In your capacity as vice president or as vice president and general manager or both, did you give consideration to the form of contract to be entered into?

A. Yes, sir.

Q. Did you consider particularly the merits or demerits of this form of contract as contrasted with others?

A. I did.

Q. In your opinion, was that form of contract a form of contract advantageous to the Fleet Corporation?

A. Under the conditions that then obtained, yes.

Q. Did you so regard it at that time?

A. I did, or I would not have signed it.

Q. What were the advantages that accrued to the Fleet Corporation growing out of that form of contract at that time?

A. In the first place, it was an elastic contract that permitted us to make changes during the conduct of the work. In the second place, it provided for taking up any extraordinary expense that might happen. It provided also for a very probable inefficiency of labor that was very hard to compute, and altogether put the Government on the basis of getting its ships from the Bethlehem and certain other yards at costs plus a reasonable profit, and lastly, gave the shipbuilders an incentive to do their very best.

Q. By that you mean what?

A. Use their ingenuity to make a larger profit, and incidentally make a lower cost for the Fleet Corporation.

Q. That was an advantage attributable to the cost-plus form of contract?

A. Yes, sir. At that time the cost-plus form was inadequate.

BY MR. ROBERTS:

Q. Why?

A. Because it placed no limitation on cost, which would be an incentive to make things cost more.

Q. You presume that under a cost-plus contract also there is no incentive for the builder to get done?

A. Yes.

BY MR. WOOD:

Q. I wanted to ask you whether that form of contract, in addition to providing an incentive for sav-

ing, provided an incentive for expedition of completion of work?

A. Yes.

Q. That was a very important situation with which you were then faced?

A. Yes. There were two ships placed on a cost-plus basis. They were supposed to be hospital ships. There we had no chance at all to make up any kind of estimate, even an approximate one.

Q. Had you prior to that time had experience with similar forms of contract in your own business, or contracts working on the same principles?

A. Participation clause of contract. We have two kinds of payment—three kinds, really—day rate, piece rate, and premium rate. The premium rate is based on the partition of savings. A group of men usually are given a number of hours to complete the job, and then get either fifty or sixty per cent. of the time they save, and get paid for that. That is exactly the same form of contract used here.

Q. It becomes an incentive contract?

A. Yes.

Q. As a result of your observations in working out contracts of that description, had you formed any conclusion as to the relation of the base price to be fixed with what might be called a close estimate of bare cost, whether at such estimate or in excess of such estimate?

A. The price had to be placed for actual cost, if we knew the cost, plus an allowance for contingencies, plus an allowance for incentive, plus the fee. So we start out with the bare cost; then in order to meet any contingencies that may happen, add some allowance for contingencies; in order to give

a proper incentive, add an incentive allowance; and then add the fee.

Q. That is to say, if I properly understand you, and I do not want to put words in your mouth, the advantages that were anticipated to accrue under this form of contract would be dissipated unless the base price was a figure sufficiently high to afford a reasonable opportunity of saving under that base cost?

A. You must provide the incentive.

Q. That is the way the incentive was provided?

A. Yes.

Q. Did you know that the Bethlehem was under contract with the Navy for the construction of destroyers under this same form of contract?

A. Yes, sir.

Q. And in reaching your conclusion that this would be an advantageous form of contract, did you consult with representatives of the Navy?

A. I did, with Frank Roosevelt and Admiral Taylor.

Q. To what extent did that influence your judgment?

A. We were about to place contracts with Fore River, who had some contracts with the Navy, and I did not want two different contracts with the same customer in the same Yard.

Q. Why was that?

A. If we had placed lump sum contracts on the Fore River Yard, there might have been a possibility of charging to the lump sum contracts certain of the expense that properly belong to cost-plus contract.

Q. And vice versa?

A. Yes.

Q. So that in your opinion it was a further advantage to have the Navy Contract and your contracts on the same basis?

A. Yes. You see, the Bethlehem contracts were not the only contracts of that kind. We have contracts with the Newburg Shipbuilding Company, the Hog Island Company, and others. They were all on that same basis of cost plus participating savings plus a fee.

Q. Can you illustrate to us by some very simple calculation the advantage of that form of contract?

A. I think I can point out the fact. Let us assume a lump sum contract of $2,200,000, based on the cost of two million dollars and a profit of ten per cent. in comparison with the cost plus a participation of savings plus a fee. Assuming two million dollars as the base price, and an actual saving of $300,000, which I think was about the sum of some of the Bethlehem contracts, then the total cost would be $1,700,000, that is, the two million less the $300,000, plus half the savings, or $150,000, plus the fee of $200,000 which makes a total of $2,050,000, against $2,200,000. Yet in this case the profit is ten per cent., and in the other case the profit is twenty-two per cent.

BY MR. ROBERTS:

Q. In the lump sum contract the profit is ten per cent.?

A. Yes.

Q. In the other one the profit is twenty-two per cent.?

A. Twenty-two per cent., because you are figuring on a very much lower basis.

BY MR. WOOD:

Q. The net cost to the Fleet Corporation is less?

A. $150,000 less.

Q. What would you say as to this form of contract if the base price had been fixed down at something like your assumed actual cost of $1,700.00?

A. The probability is that without an incentive the cost would have gone up.

Q. What about the time of delivery?

A. That would have suffered likewise.

Q. The time of delivery would have been lengthened? A. Yes.

MR. WOOD: We desire to offer in evidence a memorandum from Mr. Piez to the Board of Trustees of the Fleet Corporation, dated October 9th, 1918, to be found beginning at page 494 of the printed documents.

MR. BROWN: There is no objection.

MR. ROBERTS: It is admitted as B-6 as a physical exhibit.

BY MR. WOOD:

Q. Mr. Piez, just to refresh your recollection, you recognize this memorandum which has been introduced as Exhibit B-6 as a report and recommendation to the Board of Trustees relating to a contract made in the autumn of 1918 with the Bethlehem Shipbuilding Company for the construction of certain troop ships, do you not (showing to witness)? A. Yes, sir.

Q. It appears from that memorandum, in respect of the contract then under consideration, which may be identified in the record as contract No. 465, Bethlehem had submitted detailed estimates of the cost of those ships. That is correct, is it not?

A. For the West Coast, yes.

Q. Those estimates were made in the same de-

tail in which estimates are customarily made? Is that right?

A. I presume so. I don't remember that detail.

Q. As appears from that memorandum, they were turned over to somebody in the Fleet Corporation to check, a Mr. Cox?

A. Yes.

Q. Without assuming any further what was done with that particular contract, I would understand from your memorandum that by sometime in the spring of 1918 you, or someone else or the Board had reduced to a formula the matter of determining the relation between the base price, or what is called the estimated cost of contracts of this description entered into, and the bare cost of the ships as closely figured? Is that right?

A. Yes.

Q. Had such a formula been devised in December, 1917, or January, 1918?

A. That formula is inherent in that type of contract.

Q. But you seem to have reduced it to a percentage basis here. You had not reduced this to any percentage basis as early as December, 1917?

A. This was a development.

Q. You were still considering these contracts working on the same principle disclosed in this memorandum?

A. Yes. There had to be an incentive, that had to be added to the bare cost.

BY MR. ROBERTS:

Q. There had to be a spread between the bare cost and the so-called base cost?

A. Yes.

BY MR. WOOD:

Q. You were not an experienced ship builder?

A. I wouldn't call myself that, no, at that time. I might have qualified after I got out.

Q. You really have not had any experience of your own?

A. We built ship unloading, and unloading machinery.

Q. Were there men associated with the Fleet Corporation who had had practical experience in ship construction?

A. Yes.

Q. Who were those men?

A. The head of our construction department was Admiral Bowles, a graduate of Annapolis, builder of the White Squadron, president of the Fore River Ship Building Company I think for five or six years; his First Aide in the technical department was D. H. Cox, a very well known marine architect and engineer. There was August Pryor, a graduate of Annapolis; George Radford, a graduate of Annapolis.

Q. Was there a man by the name of Ferris?

A. Yes, Theodore Ferris was the head of our designing department.

Q. Was he an experienced naval architect?

A. Very.

Q. Did you regard these men as competent shipbuilders?

A. I did.

Q. They are the men you relied on for technical advice in respect of ship construction and costs? Is that correct?

A. Yes, sir.

Q. As proposals for tonnage were made by Bethlehem or other builders and prices submitted, whether on this form of contract or on a lump sum bid, what was the ordinary course or practice of the Fleet Corporation in connection with those submissions?

A. They were submitted to Captain Radford, head of the contract division.

Q. They were submitted to him to be examined, analyzed, and checked?

A. Yes. He passed them on to the technical division.

Q. Do you know whether or not these particular proposals went through that course? I am referring particularly to Bethlehem's letter of December 19th, 1917.

A. They did. The memorandum recommending the closing of the contract was signed by Admiral Bowles and Captain Radford.

BY MR. ROBERTS:

Q. The memorandum recommending the signature?

A. The memorandum suggesting the closing of the contract was signed by Admiral Bowles and Captain Radford.

BY MR. WOOD:

Q. It is your understanding that prior to passing the matter up to you, these prices had been checked and analyzed by Bowles and Radford, and those who were working with them?

A. I don't know how closely they were analyzed. They were checked up in the usual way.

Q. That was one of their duties?

A. One of their duties. That was the regular process through which every contract was signed.

Q. The memorandum to which you refer is the memorandum which has been offered as G-117, to be found at page 258 of the printed documents, and dated January 5th, 1918?

A. Yes, sir.

Q. Subsequently you signed the letters which have been offered in evidence respectively as G-118, G-119, and G-120, and which in the printed documents immediately follow the memorandum of January 5th, awarding these contracts to Bethlehem at the prices named?

A. Yes, sir.

Q. In point of fact, those letters were prepared by Bowles and Radford and submitted to you with their memorandum of January 5th?

A. Yes.

Q. Do you recall whether after the receipt of that memorandum and before releasing the letters which accompanied it, you yourself made a check of any of the base prices that were specified in these letters with the prices at which contracts for the construction of other ships were being let?

A. I did.

Q. How did you make that comparison?

A. I compared the cost of two ships included in this order from the Union Plant with the prices on ships that we bought at the same time from the Moore Ship Building at Alameda. Both were under the same wage scale, as I recall it. The cost of the Moore ships ran about $245 per dead weight ton. The cost of the Bethlehem ships, including the base price plus the fee, plus the participation in savings—the base price plus the fee, which was the maximum cost of these vessels represented to the government, and found that the price quoted by Bethlehem was about $230 per dead weight ton

against $245. I think there were several other comparisons made.

BY MR. ROBERTS:

Q. Were the Alameda ships on a lump sum bid?

A. Yes.

BY MR. WOOD:

Q. That is, the Moore Ships?

A. Yes.

Q. Did that contract with the Moore Shipbuilding Company carry with it protection similar to the Bethlehem proposal?

A. Yes.

Q. So you were comparing the lump sum price that Bethlehem used for substantially the same size and type of ship with the estimated cost, the base price submitted and agreed to by Bowles and Radford, plus the fee?

A. Yes.

Q. You found that the two elements in the latter were less than the lump sum price at Moore?

A. Substantially.

Q. Do you recall whether you made any comparison with ships proposed to be constructed by the Baltimore Drydock Company?

A. Yes, but that was afterwards.

Q. I think the record shows that the Baltimore Drydock Company contract was not dated until February 25th. I want to ask you whether, notwithstanding that, either the prices had been fixed, or negotiations were virtually simultaneous.

A. There were a number of contracts negotiated pending my signature when I was made general manager. I recall that the Baltimore Drydock Company had at that time quite a number of proposals before

us. Whether they covered this particular one I don't know.

Q. Where you could find lump sum contracts for the type and size of ships that could be matched with the Bethlehem proposals, you made that character of comparison which you have described?

A. Yes.

Q. In making that comparison, what was your attitude or what was your idea as to the relationship between a lump sum contract, and those proposals, which would represent a condition satisfactory to you?

A. Well, if the cost-plus-fee-plus-participation contract amounted to the same, so far as the base cost or fee was concerned—amounted to the same or less than the lump sum, I felt we were justified in going ahead.

Q. That is for the reasons outlined in your explanation of the advantages of this form of contract? That was your policy and the mental attitude with which you approached these proposals?

A. Yes, sir.

MR. WOOD: We offer in evidence a document appearing at page 579 of the printed documents, being an extract from the minutes of the meeting of the Board of Trustees of the Fleet Corporation on May 2nd, 1918.

MR. BROWN: We have no objection.

MR. ROBERTS: It is received in evidence as B-7.

BY MR. WOOD:

Q. Mr. Piez, I show you this extract from the minutes, from which you will note that there has been spread upon the minutes a letter from Mr.

Schwab to the president and trustees of the Fleet Corporation, asking in effect that someone other than himself be designated to handle all business transactions between the Fleet Corporation and the Bethlehem Companies whose names are designated in the letter, followed by a resolution that all contracts be submitted to the Board for approval. It does not say anything about the execution, but that such contracts be approved by the vice president. Was that yourself or some other vice president?

A. That was in confirmation of a general understanding we had with Mr. Schwab when he decided to come in.

Q. A confirmation of an understanding you had with him at the time he decided to come in?

A. Yes.

Q. Do you recall when that understanding was reached?

A. Not exactly; about the middle of April. Mr. Schwab came down on a Sunday. We had an all day session—Mr. Hurley, Mr. Bainbridge Colby, and myself. He mentioned the difficulties and the dangers he would subject himself to if he took an executive position with the company, that we had a great many contracts. Finally, after an all day session, he decided to come if the President would assure him that he would not stultify him in accepting that position.

Q. It was an understanding reached that if he came it would be on the assumption that he was to be relieved from all contract or activity in connection with the Fleet Corporation, and that some one else would be delegated to represent the Fleet Corporation in all dealings with Bethlehem? Is that right?

A. Yes, sir.

Q. Did Mr. Schwab keep his part of the bargain?

A. He certainly did.

Q. Did he during his term of office as Director-General—

A. He abstained from contracts.

Q. And had no business dealings with Bethlehem?

A. He had no business dealings with Bethlehem. He concerned himself very little about contracts; he concerned himself more about the morale of the men in the yards.

Q. During the period Mr. Schwab was director-general, what officer of the Fleet Corporation took on chiefly the responsibility of any business dealings between the Fleet Corporation and the various companies?

A. The vice-president.

Q. You mean yourself?

A. Myself; yes, sir.

Q. In discharging your duties in connection with business dealings with Bethlehem, were you influenced in any degree by the fact that Mr. Schwab was director-general of the Fleet Corporation and also connected with Bethlehem?

A. Not a bit.

Q. Can you give us any illustration of the complete independence of action that you exercised in connection with that matter?

A. We had a contract with Bethlehem for the construction of what is known as Liberty Yard. It involved an expenditure of about twenty millions. Also the construction of about ten troop ships, which involved an expenditure of about forty millions. There was some difference between us as to the cost of construction, and I cancelled the order for the

yard without consulting Mr. Schwab or asking him or telling him. I simply telephoned Mr. Hurley that it seemed to me a wise thing to do, and he authorized that procedure. A few days after that the entire contract of sixty million dollars was cancelled.

Q. Mr. Schwab was never consulted about that?

A. He never wanted to be consulted. He never wanted to hear anything about it.

Q. I want to ask you a question or two about your dealings and relations with Mr. Powell. Was there any confidential relation of any character that existed between Mr. Powell and yourself, any position of trust and confidence?

A. Powell always struck me as a very capable man and a shrewd bargainer.

Q. What I want to ask you is whether your dealings with him were at arm's length as have been your similar dealing in your business career with other people with whom you were dealing.

A. Oh, we were very close. I went to him for advice, as I did with Homer Ferguson. They were always ready to extend information and assistance to me in my early days of inexperience.

Q. But you made up your own mind in questions submitted to you?

A. I always have.

MR. WOOD: We offer in evidence a contract between the American Shipbuilding Company and the United States Shipping Board Emergency Fleet Corporation dated October 24th, 1918, which has been produced by counsel for the Fleet Corporation under call, together with three letters or memoranda thereto attached.

MR. BROWN: We have no objection.

MR. ROBERTS: It is received in evidence as a physical exhibit and marked B-8.

BY MR. WOOD:

Q. I show you, Mr. Piez, a memorandum from Mr. Schwab to Mr. Hurley dated October 2nd, 1918, which has been offered in evidence as Exhibit G-160. As you will observe from this memorandum, it is a memorandum reporting to Mr. Hurley that an agreement had been reached with Mr. Farr, who the record shows was president of the American Shipbuilding Company, for modification of certain contracts that the American Shipbuilding Company had with the Emergency Fleet Corporation. I now hand you an exhibit which has just been introduced as Ex. B-8, together with its attachments and ask you whether you recognize the contract contained in Ex. B-8 as the contract which eventuated from the agreement referred to in Mr. Schwab's memorandum of October 2nd?

A. Yes, sir.

Q. This contract, B-8, contains certain stipulations and certain details of settlement not referred to in Mr. Schwab's memorandum of October 2nd. I notice the contract is executed by you on behalf of the Fleet Corporation. Did you negotiate its final terms with the American Shipbuilding Corporation, or were they negotiated by somebody else?

A. Negotiated by our general counsel.

Q. And that was—

A. Chester Cuthell.

Q. As appears from the contract and from Mr. Schwab's memorandum, both relate to a modification of certain contracts then in existence, that is, in existence on October 2nd, 1918, between the Fleet

Corporation and the American Shipbuilding Corporation?

A. Yes, sir.

Q. And Mr. Schwab's memorandum says that Mr. Farr, the president of the American Shipbuilding Corporation consented to have his contracts modified so that his profits were to be ten per cent. on costs, or something to that effect. Had you had anything to do with the negotiation with Mr. Farr of the contracts which were modified by Exhibit B-8, the modification of which is spoken of in Mr. Schwab's memorandum?

A. Yes, sir.

Q. Will you please tell us about those negotiations and any representations that may have been made at that time by Mr. Farr?

A. Negotiations had been carried on by Admiral Capps. At the time I went with the Fleet Corporation I was asked to sign forty individual contracts covering forty ships some time near the end of November.

Q. November, 1917?

A. November, 1917. At that time Admiral Capps passed the recommendation over to me with the statement that he thought the prices were rather high. I questioned Mr. Farr about that, and he said after some pressure that they had decided to limit their profits to ten per cent. and some time after that produced a resolution by their Board advising us of that fact.

Q. So that this modification was only in confirmation of his own representations at the time that the contracts modified were made?

A. Yes, sir.

Q. If that was Mr. Farr's purpose at the time of

the original contracts, which I understand were on a lump sum basis, why wasn't it written into the contracts? Did Mr. Farr give any explanation?

A. Yes. He did not want to subject himself to audit processes of the Emergency Fleet Corporation.

Q. Mr. Piez, are you able to state whether during Mr. Schwab's term of office there was any policy upon the part either of himself or of the Fleet Corporation to limit contractors to a ten per cent. profit on the cost of ships built?

A. There was no policy of that kind at that time.

Q. If there had been such a policy, you would have known it?

A. Absolutely.

Q. I want to ask you whether you were very much concerned at that time in view of the Excess Profit tax with the profits that might be realized by the shipbuilders?

A. We thought that the Excess Profit tax and the War Profit tax would take care of any excess profits. That is why they were passed by Congress.

Cross Examination

BY MR. BROWN:

Q. Mr. Piez, you had nothing to do personally with the negotiation of the revision of the American Shipbuilding contract?

A. Not the revision.

Q. That was a matter which Mr. Schwab handled himself?

A. Mr. Cuthell handled it.

Q. Mr. Schwab did not participate in that in any way?

A. Not that I know of. He signed the letter.

Q. Were you in favor of that revision of the American Shipbuilding contracts?

A. I was.

Q. Did you participate in the negotiations which led to the reduction of those prices?

A. No, sir.

Q. As I understand it, when you went with the Fleet Corporation in November, 1917, you had not had any shipbuilding experience? Is that correct?

A. That is right.

Q. You became general manager of the Fleet Corporation December 17th, 1917?

A. About that time; yes, sir.

Q. It was about that time that you were engaged in these negotiations with the Bethlehem representatives with a view to entering into the contracts for the additional tonnage, was it not?

A. Most of those negotiations were carried on by Captain Radford and Mr. Bowles. It came up to me for final decision.

Q. Did you participate in any of the conferences at that time with representatives of the Fleet Corporation?

A. Perhaps in the final conference.

Q. But you were familiar with their proposals, were you not, which have been offered in evidence?

A. Yes, I had several sessions with Admiral Bowles and Radford.

Q. What was the condition of the Fleet Corporation with respect to whether or not it was overwhelmed with work at the time you became general manager in December, 1917?

A. It was thoroughly snowed under with work.

Q. These proposed Bethlehem contracts were but

one of a great number of very important matters you had crowding your attention?

A. Yes, sir. We had four general managers in four months.

Q. How do you account for that? The pace was too great?

A. I am too modest to say.

Q. You, as well as your whole organization in December, 1917, as I understand it, were literally swamped with work, and it is true, is it not, that neither you nor any other of your organizations had very much time to devote to consideration of any particular contract that was presented to you for consideration?

A. Radford was not very much pressed. Admiral Bowles and Radford handled this and gave it a very considerable amount of time.

Q. They were not occupied with other matters?

A. Captain Radford was not. Admiral Bowles was pretty well occupied.

Q. Do you know of your own knowledge what Admiral Bowles did in the way of checking up the proposals submitted by the Bethlehem Company?

A. Bowles reported several times to me while negotiations were going on.

Q. He reported that Bethlehem were reluctant to build tank ships and were only persuaded with the greatest difficulty to build such ships?

A. Yes.

Q. He also reported, did he not, that the prices submitted by Bethlehem, and as finally reduced after a process which has been described by counsel for Bethlehem as a jewing down process, were still too high and unsatisfactory to Messrs. Bowles and Radford?

A. Yes.

Q. And at the time they made that report to you, you had in your possession, had you not, a letter from Mr. Powell in which he states—I am referring to page 257 of the Concession of Documentary Evidence, Exhibit G-116—"We further refer to my conference with the vice-president and general manager of the Emergency Fleet Corporation on Friday the 21st ultimo. This will confirm the statement then made that while this company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice-president and general manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels." You had that letter in your possession, did you not?

A. Yes, sir.

Q. What did you do with that letter in your possession with respect to the report of Messrs. Bowles and Radford that the prices which Bethlehem insisted on, even as reduced, were still too high?

A. Probably endeavored to get another reduction.

Q. You probably endeavored to get another reduction?

A. That would be the natural thing to do.

Q. Did you do that yourself?

A. I don't recall.

Q. You do not recall whether you attempted to get another reduction or not?

A. I am pretty sure I must have.

Q. Whom did you see?

A. I probably had another session with Mr. Powell.

Q. You had great confidence in Mr. Powell's business ability and experience, as well as in his integrity, did you not?

A. Yes, sir.

Q. When Mr. Powell insisted that these prices were fair and reasonable, you relied on what Mr. Powell told you in that respect?

A. Yes, and on my own judgment.

Q. And at the time of that reliance, you had also been advised by the general counsel of the Fleet Corporation, had you not, that regardless of what prices were named in these contracts, if they should afterwards appear to be excessive, under existing legislation it was the right of the Fleet Corporation to reduce those prices so as to afford only just and reasonable compensation?

A. Yes, sir.

Q. That was the advice Mr. Cuthell also gave to Mr. Schwab?

A. Probably. I don't know.

Q. Wasn't it the same advice on which all executives of the Fleet Corporation were proceeding at that time?

A. Mr. Schwab had little or nothing to do with the revision of contracts or making of contracts.

Q. But Mr. Cuthell did give such advice to you?

A. Yes, I knew that from reading the statute.

Q. In other words, you proceeded in all these

negotiations on the assumption that such advice was correct?

A. Yes.

Q. You were more concerned at that time, were you not, with getting ships built, due to the urgency of the situation, than any investigation whether or not the representations of Mr. Powell, in whom you had complete confidence, were correct or incorrect?

A. There was no time for haggling. I might add to that that I was put in there to get things done.

Q. You had a tremendous mass of work to do, and if these ships were to be built, it was up to you to make the best terms possible and to come to some agreement in order that the progress should be commenced?

A. Absolutely. Negotiations had been going on for some months prior to my coming.

Q. Of course, your memory is necessarily vague after so many years, but I do not think you mean that negotiations with respect to these contract ships had been pending for many months?

A. No, stock ships.

Q. The first proposition with respect to these contract ships was made December 13th, 1917?

A. Yes.

Q. As time went on, during April and May, 1918, the Fleet Corporation was much more organized than in December, 1917?

A. Improving steadily.

Q. You probably had more time to devote to the question of prices than you had in this earlier time in December, 1917?

A. We had built up our organization.

Q. As I understand this form of contract, known as the half-saving contract, it was contemplated

that the half savings would turn on Bethlehem's ability to stimulate labor?

A. Stimulate the entire organization.

Q. And the steel prices in December, 1917 had been fixed by agreement between the War Industries board and the steel manufacturers at prices that were satisfactory to manufacturers at that time, had they not?

A. I think so.

Q. Those prices were such as allowed any efficient steel producers a reasonable profit?

A. Yes.

Q. That was in order to insure maximum production?

A. Yes.

Q. So that efficient steel manufacturers would probably be enabled to obtain a very liberal profit on the basis of those prices?

A. Yes.

Q. A large part of the plates and shapes that went into the contract ships were made by Bethlehem Steel Company, were they not?

A. I don't know as to that.

Q. There was no anticipation in December, 1917 or in fact at any time during 1918 that there would be an increase in these steel prices which had been fixed by agreement between the War Industries Board and the steel manufacturers?

A. I don't know as to that.

Q. Did you at that time hear of any dissatisfaction with the prices?

A. Not that. There was considerable doubt as to whether they could produce steel enough to take care of our needs.

Q. Bethlehem could very readily have obtained

from the Fleet Corporation protection as to all their material requirements, if they had so desired or requested, could they not?

A. I don't know as to that.

Q. Weren't you in charge, when you became general manager, of these contracts?

A. Yes, but many of those things never came up to me for decision.

Q. Weren't you giving material protection in other contracts?

A. I think on lump sum contracts, but not on cost-plus participation.

Q. Was that because it was not requested in the latter form of contract?

A. I can't say that.

Q. Can you think of any reason why you would not have given material protection if they had given you the unit prices and requested protection?

A. I can't say that.

Q. You cannot think of any reason why you would not have given such protection if they had requested it and stated the unit prices as the basis of their estimate?

A. I don't recall anything tending toward that question.

Q. As far as you remember—

A. I don't remember; that is the trouble. That was a very minor affair in those days.

Q. The material item was a very minor consideration?

A. The whole question of price lay with other departments; lay with the War Industries Board largely.

Q. In other words, the Government through its many agencies at that time was in a position to

regulate material prices by a system of allotment and otherwise?

A. Yes, but they did that very cautiously.

Q. But through their priority orders and control of transportation and control of raw materials they were in position to more or less regulate the prices of such materials as would go into the shipbuilding program?

A. The War Industries Board, as nearly as I can recollect, did not begin to function well until February or March, 1918, when Mr. Bernard Baruch took charge. Before that there was the Council of National Defense. They did not function very effectively, and it was not until Baruch and Alexander Lake took part that they began to exercise any control over these things.

Q. There has been quite a question raised by Bethlehem with respect to items of materials. I want you again to think if you can recall any reason why, if Bethlehem had requested from you material protection with respect to these contracts and had stated the unit prices of materials used as the basis of estimates, you or the Fleet Corporation would not have given them such protection.

A. My memory is very bad. I cannot project myself back to the situation which existed, and answer that question intelligently.

Q. At the time of your connection with the Fleet Corporation, it was always understood that Bethlehem was to be permitted to build duplicates of ships already in construction?

A. That was the quickest way of arriving at results. They were subject, of course, to revision by the technical department of the Fleet Corporation.

Q. Your first consideration of the half-saving

form of contract in connection with the Bethlehem contracts was the result of Mr. Powell's letter of December 13th, 1917, which has been offered in evidence as Exhibit G-104 and of which I now show you the part which appears on page 202 of the Concession of Documentary Evidence?.

A. Yes, sir.

Q. It is a fact, is it not, Mr. Piez, that all the Fleet Shipbuilding contracts, including the Bethlehem contracts, were executed in pursuance of the authority conferred on the Fleet by the President under Executive Orders referred to at pages 632 and 638 of the Documentary Evidence, dated July 11th, 1917 and December 3rd, 1918, which I ask you to now look at?

MR. EVANS: That is objected to as asking the witness to state a conclusion of law.

MR. ROBERTS: The objection is sustained.

BY MR. BROWN:

Q. Mr. Piez, in executing all shipbuilding contracts on behalf of the Fleet Corporation, whether Bethlehem contracts or otherwise, did you assume you were acting in pursuance of those Executive Orders of July 11th, 1917 and December 3rd, 1918 which I have referred to?

A. I always understood that that—

MR. EVANS: We object to the witness stating what was understood.

MR. BROWN: Will you repeat the question?

(Question repeated as follows: "Mr. Piez, in executing all shipbuilding contracts on behalf of the Fleet Corporation, whether Bethlehem contracts or otherwise, did you assume

you were acting in pursuance of those Executive Orders of July 11th, 1917, and December 3rd, 1918 which I have referred to?")

THE WITNESS: I assumed I was working under the authority delegated to me by the Emergency Fleet Corporation.

BY MR. BROWN:

Q. And in turn the authority delegated to the Emergency Fleet Corporation by the President under the Executive Orders referred to?

A. Yes.

Q. And all moneys paid out by the Fleet Corporation to shipbuilders, including Bethlehem, were moneys which were specifically appropriated by Congress?

MR. WOOD: That is objected to as not the best evidence.

MR. ROBERTS: I will have to sustain the objection and grant an exception to the Government.

BY MR. BROWN:

Q. Mr. Piez, will you tell us whether or not during the time of your connection with the Fleet Corporation the moneys paid by it to shipbuilders, including Bethlehem, were moneys which were appropriated by Congress for that purpose?

MR. EVANS: That question is objected to as not the best evidence.

MR. ROBERTS: Mr. Brown, I think the objection is technically sound.

MR. BROWN: May I change it and say "appropriated by Congress"?

MR. ROBERTS: I think the best evidence of that is the drafts under the appropriation.

(Discussion off the record.)

BY MR. BROWN:

Q. Mr. Piez, in comparing prices, I think you mentioned a contract between the Moore & Scott Iron Works and the Fleet Corporation, did you not?

A. The Moore Shipbuilding Corporation.

Q. Would that be Moore & Scott?

A. I think so.

MR. WOOD: They are two different concerns.

MR. BROWN: They changed their name subsequently.

BY MR. BROWN:

Q. I show you what purports to be a contract between the Moore & Scott Iron Works and the Emergency Fleet Corporation, dated December 31st, 1917, being contract 153, and ask you if that is the contract to which you referred (showing to witness).

A. That was a lump sum contract on December 31st, 1917, according to the report I made to the Board.

BY MR. ROBERTS:

Q. What was the tonnage?

A. Ten thousand tons.

Q. What is the contract number?

A. 153. There were two contracts, one for two and one for four ships—tankers,—10,000 tons.

Redirect Examination

BY MR. WOOD:

Q. Mr. Piez, have you any distinct recollection of having asked Powell to reduce his prices after receipt of the Bowles memorandum on January 5th, or is that just based upon the presumption that that would have been the natural thing for you to do?

A. That is all. I think that is what I said in my testimony, that that would have been the natural thing for me to do.

Q. It appears in evidence here that Mr. Powell left for San Francisco on the night of January 3rd, after the conclusion of his conference with Bowles, and two days afterwards you received Bowles' memorandum of January 5th, and your award was dated that day and sent to the Bethlehem Shipbuilding Corporation.

A. My impression must have been wrong.

Q. There is one matter concerning which I neglected to inquire in direct examination. During your term of office as vice-president and general manager of the Fleet Corporation, did you keep in pretty close touch with the progress of the work in the yards?

A. Yes, sir.

Q. Do you recall when it was that Mr. Schwab retired as Director General?

A. He retired sometime in December. He actually retired long before that.

Q. He did not come back after the Armistice?

A. No. A little before the Armistice.

Q. Are you quite familiar with the condition of the work at the time of his retirement, and the state of the accounts of the Bethlehem contracts, in a general way?

A. My impression is that they were about a third completed.

Q. Would it have been possible up to the time he retired to determine the profits that Bethlehem was likely to make under these contracts?

A. No, sir. No costs had been completed. None were completed at the time I left, at the end of April, 1919.

Q. Even at the time you left, there was no way of ascertaining what the profits on these contracts were going to be?

A. No, sir. This question was never mentioned.

Q. You are familiar with the condition in the yards up to the time you left?

A. Yes, sir. There is a full report in here as to the status of each ship in each yard.

Q. That includes conditions both before and after the Armistice?

A. Yes.

Q. Based on your knowledge of those conditions before and after the Armistice, have you any opinion as to whether or not Bethlehem would have realized the profits which were made under these contracts except for the termination of the war?

A. I don't think they would have.

Q. Why not?

A. Because things changed very decidedly. Overtime work was cut out; night work was cut out; inefficient men were dropped; there was a very big cut in the payrolls; and the only efficient men were kept. I was told by Mr. Skinner in Seattle that he saved $150,000 per hull after the Armistice.

Recross Examination

BY MR. BROWN:

Q. Mr. Piez, I neglected to ask you whether Mr. Schwab, during the time he was connected with the Fleet Corporation, was the executive head of the entire organization and the man who accepted the responsibility for the final decisions that the construction division had to reach. I quote what purports to be an excerpt from testimony given by you.

A. He ranked as vice president, but in the division of work he assumed no such authority.

Q. Is that statement which is purported to have been made by you substantially correct? Shall I repeat it?

A. Yes.

Q. The Chairman asked: 'Just what did he do? He was director-general, you said, and he did not charge himself with the details. What authority and jurisdiction did he exercise? He visited the various sections of the country.'

> MR. PIEZ: Well, he was the executive head of the entire organization, the man who accepted responsibility for the final decisions that we in the construction division had to reach.'

Is that correct?

A. Yes.

BY MR. WOOD:

Q. He was never a member of the Board of Trustees?

A. No, sir.

Q. Mr. Brown calls your attention to Mr. Powell's letter to the Fleet Corporation of December 13th, 1917, Exhibit G-104, to which reference is

also made in his letter of December 19th, G-109. I ask you whether you recall having seen those letters during the course of the negotiations on the Bethlehem contracts?

A. The two letters of December 13th and 19th?

Q. Yes.

A. I am very certain I saw the December 19th; not so sure of December 13th, but in all probability I did see it.

Q. In all probability you did see it?

A. Yes."

MR. WOOD: In connection with the testimony of Mr. Piez we also desire to offer the exhibits which were offered at the time as a part of his testimony. I think, that, to a very considerable extent, those exhibits have already been offered in this proceeding prior to this time, and some of them I know have.

MR. BROWN: I assume that the offer of this testimony carries with it all the offers in evidence that went with it.

THE MASTER: It is understood by the Master that counsel agree that the Exhibits referred to in the testimony of Mr. Charles Piez and offered before Mr. Roberts in line with that testimony, are included in the record here and to be given, for the purposes of this case, the same exhibit numbers as they had there.

The same ruling will apply to any exhibits that are referred to in Mr. Schwab's testimony or offered at the time Mr. Schwab was a witness.

HARRY BROWN, recalled.

BY MR. EVANS:

Q. When you were on the stand before the Master inquired whether you had made any study to determine what the actual ratio of efficiency of labor was after December, 1917, and you said you had?

A. Yes, sir.

Q. Have you been able to lay your hands on the papers which show the results of the study that you did make and also the papers that show the basis of that calculation?

A. Yes.

Q. What yards are included?

A. Fore River at Quincy, Massachusetts, the Union plant at San Francisco.

MR. EVANS: May it be admitted that counsel for the Government have had an opportunity to examine the papers?

MR. HALLETT: No. We just had the one sheet, a yellow sheet.

BY MR. EVANS:

Q. Mr. Brown, you have handed me a white sheet, which I will ask the Master to mark for identification B-33. Tell us what that white sheet is and what it represents?

A. This represents a summary of hours for the 9100 ton tank vessels built at the Fore River plant which the keel of the first vessel was laid in April, 1915, and the last delivery made of a vessel in December, 1919.

Q. Give us the hull numbers of the vessels?

A. 244, 245, 253, 254, 268, 269, 1376, 1377, 1378, 1379, 1380, 1381.

Q. Are they all duplicate ships?

A. Substantially so.

Q. And giving the number of hours of direct labor, does that give you any idea of the relative efficiency of labor on these various ships?

A. That will give you very close to the difference of efficiency in the different periods.

Q. Were these figures made up by you or by somebody under you?

A. They were made up by a man under my direction.

Q. When, do you remember? I don't mean the day or month, but this year or last year?

A. Oh, I should say they were made in 1925 or 1926.

Q. In connection with your preparation of this case, were they?

A. Yes, sir.

Q. According to these figures what was the ratio of efficiency on labor between 244 and 245 and 253 and 254?

A. It took 8 per cent. more hours to build 253 and 254 than it did to build 245 and 244.

Q. How do you translate that into terms of any efficiency factor?

A. You would divide 100 by 108.

Q. To give you what?

A. To give you the efficiency.

Q. What do your figures show as to the relative efficiency of labor on 253 and 4 and 268 and 9?

A. 268 and 9 would be 43½ per cent. greater than 253 and 254.

Q. You mean the number of hours?

A. Number of hours.

Q. And if you want to make a comparison be-

tween your allowance of 30 per cent. as a factor of allowance for inefficiency, what is the actual factor as developed between those two groups or ships as shown by these figures you have just given us? Do you understand the question?

A. No, I don't.

Q. I want it in terms of percentage so as to get an exact comparison with your 30 per cent. which you allowed in your estimate?

A. Well 30 per cent. represents 77½ per cent. efficiency.

Q. I don't want to know what the 30 per cent. represents in terms of efficiency but I want to know what the other thing represents in inefficiency. I want the percentage to compare with your 30 per cent.

A. That is what I gave, 43½.

Q. Your percentage of increase in hours is 43½, isn't it?

A. 43½. Now I added 30 per cent. on the original figure and now that would correspond to the 43½ per cent. I am now giving you.

BY THE MASTER:

Q. As I understand it, in making up your calculation, you used 100 hours as your normal factor?

A. That is right.

Q. And add 30 hours to that, and that would be 30 per cent.?

A. Yes.

Q. Now you add to your hundred on this basis 43½ hours?

A. That is right.

BY MR. EVANS:

Q. The keel of 253 was laid down when?

A. May, 1916.

Q. And when was 253 delivered?

A. June, 1917.

Q. The keel of 254 was laid down when?

A. August, 1916.

Q. And delivered when?

A. July, 1917.

Q. Now you have grouped those two ships and taken an average, is that right?

A. Yes, sir.

Q. Now then 268, when was the keel laid?

A. June, 1917.

Q. And she was delivered when?

A. September, 1918.

Q. And 269, the keel was laid when?

A. December, 1917.

Q. And she was delivered when?

A. September, 1918.

Q. And it is between those two boats that you base your factor of 43½ per cent. increase?

A. Yes, sir.

Q. Now do your records show that on the subsequent boat your factor of inefficiency was greatly reduced, I mean on boats that were built after the Armistice?

A. Yes, sir.

Q. Until they finally reached about the same rate of efficiency as on 244 and 245; is that right?

A. Within 2½ per cent.

Q. Now this white paper was handed to Government's counsel yesterday for their examination, was it not?

A. Yes, sir.

Q. You have also produced some photostats of certain papers which have at the head of them "Bethlehem Shipbuilding Corporation, Limited,

Estimating Division." Can you tell us what those papers are?

A. They are the details of the number of hours that went into the various ships.

Q. Do they have anything to do with the figures that you have just testified to and which are summarized on Bethlehem's Exhibit B-33?

A. They are the details from which those figures have been taken.

MR. EVANS: I will ask that these papers as a group be fastened together and marked for identification Exhibit B-34.

BY MR. EVANS:

Q. I show you another tabulation on a large yellow sheet with the caption "Union plant Direct labor, hours", and I will ask you to tell us what that is?

A. That is the number of hours required to build various ships of the same size and type at Union Plant, San Francisco.

Q. Was that made up also for the purpose of determining the relative labor efficiency at various periods?

A. Yes, sir.

MR. EVANS: I will ask that this sheet be marked for identification B-35.

BY MR. EVANS:

Q. That sheet, which is marked B-35, was handed to Government's counsel yesterday for their examination yesterday, was it not?

A. Yes, sir.

Q. And they have handed it back to you today?

A. Yes, sir.

Q. When was this sheet B-35 made up?

A. Probably three or four years ago.

Q. From information furnished by the Accounting Department?

A. That is the Accounting Department sheet.

Q. Without going into this with as much detail as I did in connection with Fore River plant, will you tell us whether this shows substantially the same relation in the efficiency of labor at the several periods under discussion as the study which you made at the Fore River plant?

A. It shows a substantial variation from the efficiency.

Q. Does it show that there was a loss in efficiency on vessels which were completed prior to the Armistice?

A. Yes, sir.

Q. And on vessels which were completed following the Armistice, or on which the bulk of the contract labor was done during the period following the Armistice shows a progressive increase in efficiency; is that correct?

A. Well they are the vessels most of the work was done on prior to the Armistice. I don't think there were any vessels on there completed at Union that would reflect the increased efficiency of labor after the Armistice. The ships on there were completed prior to May, 1918.

Q. For purposes of illustration, will you take two boats there and tell us what was the effective construction date, borrowing Mr. Sanford's phrase, and give us the comparison of efficiency between two boats having a different effective date of construction. Have you got that figure there?

A. No, I have not.

MR. BROWN: Put it in in the form of a statement tomorrow.

THE MASTER: Exhibit B-33, which has now been offered in evidence without objection on the part of the Government, is admitted and is as follows:

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

Estimating Division

4-3-31 WCM M&R

9100 TON Tankers

Hull No.	Keel	Del.	Hours Each	Rel. to 1244	
1244	Apr. 1915	Feb. 1916			
1245	June 1915	Apr. 1916	764,810		
1253	May 1916	June 1917			
1254	Aug. 1916	July 1917	824,142	1.08	
1268	June 1917	Sep. 1918			
1269	Dec. 1917	Sep. 1918	1,158,365	1.515	
1376	Fb. 1919	July 1919			
1377	May 1919	Nov. 1919	870,820	1.14	783170
1378	Mar. 1919	Sept. 1919			
					2½%
1379	Apr. 1919	Oct. 1919			
1380	May 1919	Nov. 1919	695,519	.91	
1381	May 1919	Dec. 1919			

THE MASTER: As I understand it, counsel want to reserve cross examination until they can look at these papers.

Offers in Evidence by the Government.

MR. BROWN: I now offer in evidence Exhibit offered in the preceding hearing as Exhibit G-16, as a physical exhibit, which is a statement showing the officers and directors of the various Bethlehem Companies.

THE MASTER: Unless there is objection noted as these exhibits are offered they will be received and given the same Exhibit Number for this case as they were before Mr. Roberts.

MR. BROWN: I offer in evidence the following exhibits; G-4, G-5, G-7, G-8, G-9, G-10, G-11, to G-45 inclusive with the exception of the following, which are already in: G 21, G 22, G 26, G 32, G 33, G 34, G 34½, G 35, G 36 G 37, G 38, G 43, G 44, G 45.

I also offer the following exhibits which appear in the Concessions of Documentary Evidence: G 47, G 51, G 52, G 53 G 54, G 58, G 59, G 60, G 61, G 62, G 63, G 66, G 96, G 97, G 101, G 105, G 110, G 113, G 114, G 115, G 122, G 124, G 125, G 126, G 127, G 128, G 130, G 131, G 133, G 134, G 135, G 146, G 148, G 149, G 150, G 152.

Further Exhibits which are to be included in the record: G 159, G 161, G 163 (physical), G 168, G 169, G 170, G 172 (physical), G 175, G 178.

Further Exhibits appearing in Concession of Documentary Evidence, G 193, G 194, G 195, G 196 (physical), contract between American Shipbuilding Corporation and Emergency Fleet Corporation, being one of the original lump-sum contracts which is admitted to be substantially similar to all of such contracts.

Also Exhibit G 197, Statement of Facts which Bethlehem counsel concede to be a correct statement; and Exhibit G-198, (physical).

Also, as G 208, appearing in the Documentary Evidence; Letter dated Sept. 25, 1918, addressed by Chester W. Cuthell to Bethlehem Shipbuilding Corporation, Ltd.; and, as G 209, Letter dated Sept. 26, 1918, addressed by J. W. Powell to Chester W. Cuthell, and appearing in the Documentary Evidence.

(Adjourned until 10 o'clock A. M. April 4, 1931.)

E. W. GEISS, having been duly sworn, was examined and testified as follows:

BY THE MASTER:

Q. Will you give your full name and address?

A. E. W. Geiss; 204 East Market Street, Bethlehem, Pa.

BY MR. WOOD:

Q. What position do you occupy, or what is your occupation?

A. I am assistant in the Controller's Office of the Bethlehem Shipbuilding Corporation, Ltd.

Q. How long have you occupied that position?

A. Since December, 1917.

MR. WOOD: Mr. Master, there was offered at the last trial of this case, in connection, I believe, with the testimony of Mr. Piez, a copy of a revised contract between the Fleet Corporation and the American Shipbuilding Com-

pany, which is the contract that is referred to or eventuated from some of the other documents that have been offered here, the contract bearing date of October 24, 1918. This contract, together with certain attachments in the way of what are apparently inter-office communications, was offered as Exhibit B-8. We desire to offer it at this time, to be given the same exhibit number.

THE MASTER: If there is no objection, it will be received with the same exhibit number, B-8.

BY MR. WOOD:

Q. I hand you the papers which have been introduced as Exhibit B-8, being a contract dated October 24, 1918, between the American Shipbuilding Company and the Emergency Fleet Corporation, and ask you if you have seen that contract, or a copy of it, before?

A. Yes, sir.

Q. Have you made up a statement adapting the terms of that settlement contract to Bethlehem's contract and Bethlehem's contract program?

A. Yes, sir.

Q. I hand you a paper introduced at the last trial as Exhibit B-12 and ask you if that is the paper to which you have referred as a statement adapting the basis of settlement in the American Shipbuilding contract to the Bethlehem contract?

A. It is.

MR. WOOD: We ask that the exhibit previously introduced as Exhibit B-12 be intro-

duced in this hearing and given the same exhibit number.

THE MASTER: If not objected to, it is received with the same number, B-12.

BY MR. WOOD:

Q. Was a copy of this statement, which has been introduced as Exhibit B-12, ever furnished to the Fleet Corporation?

A. Yes, sir.

Q. When?

A. Approximately three and a half years ago.

Q. And about how long before the last trial and before its introduction in the proceedings before Mr. Roberts?

A. I would say about a year and a half.

Q. This American Shipbuilding contract, Exhibit B-8, provided, did it not, that the contractors should be allowed ten per cent. on cost to be applied to the material and labor cost as it might ultimately be developed, with an allowance of twenty-five per cent. on the combined cost of labor and material for plant overhead and for all other descriptions of overhead; is that correct?

A. Yes, sir.

Q. Can you locate that provision in the American Shipbuilding contract readily? If not, of course the contract will speak for itself, but if you can readily point to that particular clause, I think you might do so at this time.

A. It is Article I, Item 1, headed "Cost."

Q. Have you undertaken to apply that provision of the American Shipbuilding settlement contract to Bethlehem's contract program, and if so, on what items of your exhibit is that application set forth?

A. Item No. 2.

Q. Items 1, 2 and 3, is it not? I am talking about the application to the Bethlehem contract of ten per cent. over material and labor cost, including, as I understand it, a twenty-five per cent. overhead for labor and material.

A. That is Item No. 3 on my statement.

Q. The whole thing takes all three items, does it not, to give the result?

A. Yes.

Q. That is what I am trying to bring out. Those first three items relate to the adaptation of that part of the American Shipbuilding contract?

A. That is right.

Q. From what source were the material and labor cost shown on your exhibit taken?

A. They were taken from the records from which the stipulation of figures was obtained.

Q. I do not understand entirely what you mean. They were taken from the final audit?

A. Oh, yes, they are the material and labor proportion of the cost of ships as set forth in the stipulation.

Q. And as finally agreed upon?

A. Yes. It also includes, so as to conform with the American Ship contract, a deduction because of scrap previously credited to the cost of our ships, which under the American Ship contract was not so credited.

Q. Now will you tell us, please, the significance of Item 4 of this exhibit and the source of the figures that it contains and the method of calculation employed?

A. Under the American Ship contract they were allowed an item of one and a half per cent. of the

original contract fixed prices, if my memory is correct, which allowance was for the purpose—the allowance, as a matter of fact, was not entirely clear, but it seems it was allowed for the purpose of defraying to loss or expense of turning the plant from a war-time plant back to a peace-time plant.

Q. Whatever the purpose, as I understand the situation, the American Shipbuilding Company had had certain contracts with the Fleet Corporation and certain fixed prices; is that right?

A. Yes.

Q. And this contract was substituted for that?

A. Yes.

Q. By agreement, at about the time referred to, in a memorandum sent by Mr. Schwab to Mr. Hurley some time in October, 1918; is that right?

A. That is right.

Q. And as a part of the terms of this readjusted payment, it was provided that there should be added to those other sums of various descriptions an amount equal to one and a half per cent. of the original fixed contract prices; is that right?

A. Yes.

BY THE MASTER:

Q. In the fixed contract price is there included the fee as well?

A. It was a lump sum. As far as American Ship was concerned, their original contracts were fixed price or lump sum contracts, and this contract of October 24, 1918, was a substitution therefor and was on a cost-plus basis.

BY MR. WOOD:

Q. With these various elements that you are describing as a part of the compensation?

A. Yes, the contract describes the elements of

cost which may enter into it, but in answer to your question, Mr. Master, I will say that the first contracts were fixed price contracts.

THE MASTER: My question was directed to the fact that as I understand Mr. Wood's question and your answer, as you were giving it orally, it related to what he called the contract price, and I was trying to make it clear that you were speaking of a contract price which included the base price or cost plus the fee as well, because your exhibit here shows that in Item 4 the percentage appears to be taken on what you call the original contract obligations, base price plus fee, and I do not want the oral evidence to create a conflict.

MR. WOOD: I think I can clear that up, Mr. Master.

BY MR. WOOD:

Q. You were adapting this American Shipbuilding contract of settlement to the Bethlehem program; is that right?

A. Yes.

Q. Now this provision in the American Shipbuilding contract which you are endeavoring to adapt provided for the addition to all other sums to be included in accordance with the contract, of an amount equal to one and a half per cent. of the original contract prices of the American Shipbuilding Company, for which contract prices this contract was substituted; is that right?

A. Yes.

Q. And those original contracts were lump sum contracts, so that the contract price included whatever the cost of the ship might have been and what-

ever profit, or amount in excess of the cost, the shipbuilder would receive under it?

A. That is right.

Q. While the Bethlehem contracts to which you were seeking to adapt it were of the form with which we are familiar?

A. Yes.

Q. Now in making that adaptation what did you regard in the Bethlehem contracts as the nearest equivalent that you could get to the contract prices in the earlier American Shipbuilding contract?

A. I used the base price set forth in the contract plus the fixed fee, which, in my estimation, made it comparable with the fixed price of the American Ship.

Q. It was as nearly comparable as any figure you could get under the two forms of contract?

A. That is right.

Q. Will you explain the significance of Item 5?

A. Under the American Ship cost-plus contract they were allowed to retain surplus materials. Under our contract we were not allowed to retain surplus materials, but turned them over to the Fleet Corporation. I have added here the salvage value of that surplus, which was estimated by the Fleet Corporation and ourselves at thirty-seven and a half per cent. of its original cost.

Q. Estimated by yourselves and the Fleet Corporation at thirty-seven and a half per cent. of its original cost when?

A. At the time of the settlement, or attempted settlement, of this case in 1922.

Q. Do you mean it was an agreed-upon figure?

A. Yes. In 1922, for the purpose of figuring savings, it was necessary that surplus material be de-

ducted from the cost, and it was agreed between us that only the salvage value of such surplus material was properly to be deducted, and we agreed in 1922 that the salvage value should be thirty-seven and a half per cent. of its original cost.

Q. And that is the figure you have used in your Item 5?

A. That is right.

Q. Now describe Item 6.

A. Under the American Ship cost-plus contract, there was an allowance for an adjustment of inventories. That, too, is somewhat ambiguous, but I took it to mean—though it may have meant something quite different—that it was to allow for a write-down of inventories left over at the end of the Shipbuilding contract to the then current prices of such material, and in adding the amount here I took our raw material inventories as of December 31, 1917, which were on hand when these contracts came into being and which inventories were used at the cost to us on these cost-plus contracts, and I assumed that the price of the inventories on hand at December 31, 1917, was roughly twenty-five per cent. below the current prices at the time they were consumed. These inventories of ours were accumulated in 1915, 1916 and 1917. Some of the items were at higher prices than the then current prices, but the average was lower. That was my interpretation of the clause in the American Ship contract with respect to adjustment of inventory.

Q. The clause to which you refer is Clause 4 of Article I and reads: "Depreciation, whether ordinary or due to special character of work, including a proper adjustment of inventory values"?

A. That is the clause, yes.

Q. Now if I understand you, at the time that both the American Shipbuilding Company and the Bethlehem Shipbuilding Corporation began doing work for the Government, they had on hand certain material?

MR. HALLETT: I beg your pardon, I do not think it appears that he knows anything about the American Shipbuilding Company. Unless he knows something about what the American Shipbuilding Company had on hand, I do not think you ought to bring it in.

Question withdrawn.

BY MR. WOOD:

Q. You interpreted that contract to mean such adjustments as might be required in order to put the value of the inventory at the time of the settlement on the completion of the work on the same basis as at the time of the beginning; is that right?

A. As I said before, I did not exactly know what it meant. I assumed that this was a reasonable interpretation of that clause, and, as I also said, it may have been entirely wrong. I mean that may not have been the meaning within the American Ship contract, but this seemed to me to be a reasonable interpretation of it.

Q. Mr. Geiss, what my difficulty is, I do not know that your interpretation is quite plain. That is what I am trying to get, and, as I understand it, you interpreted it to mean a provision for an adjustment of inventory values so that they would be on a common standard as of the time of the making of the original contracts and the settlement of the final contract. Is that what you mean, or do you mean something else?

A. My basis for that was that I felt these contract ships ought to consume materials at the current prices during the time the ship was being built. I did not think they should benefit by the fact that we had and used inventory on hand which was purchased by us at lower prices than the then current prices, which we intended to use on fixed price ships; so that I felt that this clause—as a matter of fact, the materials were used at cost to us, and, therefore, it became a benefit to the Fleet Corporation in the cost of the contract ships. This clause merely put back into our pocket—I mean in this comparison—the gain by the Fleet Corporation in the consumption of materials on hand, which were on hand at lower than current prices.

Q. You may have made it plain to the Master, but I confess you have not made it plain to me yet what the nature of this adjustment is, and I will state to you again what I understand it to be, in order to shorten the inquiry if I possibly can, that at the beginning of the period with which you are concerned a company, whatever that company may have been, would have on hand a certain stock of materials in its inventory; is that right?

A. Yes.

Q. Which would be of a certain value at that time; is that right?

A. It would be of a certain cost value.

Q. Of a certain cost value at that time, and as those materials went into the ships, they were taken into the ships, not at their then market value, but at their cost value?

A. That is right.

Q. And in the course of time and as those materials were consumed, other materials would be

purchased and would be on hand at the end of the period; is that right?

A. Yes.

Q. Those materials might have then a cost value or a market value in the aggregate equivalent to that at the beginning of the period, but at the same time represent either less or more material?

A. That is right.

Q. And what you were endeavoring to do was to adjust the inventory condition so that the company would be made whole?

A. That is the theory of it, Mr. Wood. The quantities at hand at the beginning of the period of construction of these ships and at the end of such period were so widely different that it would be practically impossible to put back the inventories into the same number of dollars that were on hand at the beginning, so that I thought a more simple way to do it was to take inventories on hand at the beginning of the period and assume merely, and entirely arbitrarily, although the sum is check, that the prices were practically twenty-five per cent. lower than would be the prices that we would have to pay for replacing materials. I think we are talking of the same thing, but wording it slightly differently.

BY THE MASTER:

Q. May I ask one or two questions, and that will help me to clear up in my mind what the testimony represents. Mr. Wood spoke of inventories at the end of the period. As I understand your testimony, Mr. Geiss, the inventories at the end of the period were totally disregarded?

A. Yes.

Q. In the ships that were built under your contracts that are in dispute, certain material was

taken into cost, and, to the extent that it represented inventory at hand at the time the contracts were entered into, it was taken into cost at the inventory cost on your books of that material?

A. Yes.

Q. To the extent that material was purchased afterward and used in the construction of the ships, it was taken into cost at the cost to you of purchasing that particular material?

A. Yes.

Q. What you have done in Item 6 is to take the inventory that Bethlehem had on hand December 31, 1917, to the extent that it was used in the construction of the ships, and only to that extent?

A. It was used many times over.

Q. I understand, but this represents the inventory actually used in the construction of the ships that was on hand December 31, 1917?

A. Yes.

Q. And you have adjusted your cost of that inventory as it appeared on your books by assuming an increase in price of twenty-five per cent.?

A. Yes.

Q. And that increase of twenty-five per cent., as I understand it, was an arbitrary, because the value or market price of that inventory, as the prices existed on December 31, 1917, varied up and down?

A. Yes.

Q. The aggregate of which, however, would show more than twenty-five per cent.?

A. That is right.

BY MR. WOOD:

Q. Now will you please describe the allowance which you have made for depreciation?

A. Under Bethlehem's contracts the Fleet Corporation allowed approximately $1,000,000 in the cost of the vessels to cover depreciation. I felt that that allowance was not sufficient, so, starting with the figure $1,000,000 as the amount allowed and using the plant values as of December 31, 1916—the reason for using them as of 1916 was that under our depreciation plan the depreciation for 1918 is based upon property values as of the next year but one previous, which would be 1916 in that case, so, explaining the calculation on this sheet—

MR. HALLETT: I could not hear that. It sounded to me as though you said that the depreciation for 1918 was fixed as of the year 1916.

THE WITNESS: No, I said it was based upon property values as of the end of the year 1916.

MR. HALLETT: And the 1917 one was also? The depreciation for 1917 was based on the same base, was it?

MR. WOOD: Suppose you let him tell.

THE WITNESS: At the time of the start of these contracts I assumed a property value, as shown on this sheet, of $18,496,569, and that is a depreciable property value as of Dec. 31, 1916. My next calculation is to determine the percentage of production of those plants which was available for commercial use at both Fore River and the Potrero Works of our Union plant. We were under obligation to the Navy to furnish it with seventy per cent. of our facilities at those two plants. At the other

three plants and the Alameda Works of Union, we were under no such obligation, so that one hundred per cent. of their facilities were available for commercial work. Taking those percentages of the original value results in the next column. I am assuming that you have a sheet in front of you and can follow me. The next problem after that was to determine what percentage of that portion of the plant available to commercial work was actually used by the Emergency Fleet Corporation and for what period of time. I assumed that of the thirty per cent. available at Fore River, the Fleet Corporation used seventy per cent. of that thirty per cent. for a period of two years, which would be twenty-one per cent. I assumed, in similar calculations for the other plants, different percentages and for different periods of time. Those carried to their natural conclusion gave me what I chose to call a weighted annual plant value used by the Fleet Corporation, which in this case amounts to $32,291,165. Dividing that weighted plant value which I said was used by the Fleet Corporation into the $1,000,000 which I previously said was allowed as cost to the Fleet Corporation, shows a percentage on plant of 3.1 per cent. I thought that was much too low and that because of overtime work the figures should be no less than say seven per cent.: so that my figure of $1,260,381 is the difference between $1,000,000, or 3.1 per cent. of that weighted plant value, and seven per cent. thereof.

BY MR. WOOD:

Q. The clause in the American Shipbuilding con-

tract that you were seeking to adapt applies to an allowance for depreciation whether ordinary or due to the special character of the work; is that right?

A. Yes.

THE MASTER: What is the percentage?

MR. WOOD: No percentage stated.

BY MR. WOOD:

Q. As I understand it, the allowance for depreciation made to you by the Fleet Corporation in its adjustment of costs was at the rate of 3.1 per cent. of something; is that right?

A. Yes, it was 3.1 per cent. of the weighted annual value of the plant used by the Fleet, as determined in that calculation.

Q. Now am I right in assuming that that represents a yearly or annual percentage assumed by the Fleet Corporation to appropriately represent depreciation during this period of use? Is that right?

A. That is right, yes, sir.

Q. What do you mean by special depreciation and by overtime depreciation, as distinguished from ordinary depreciation?

A. Ordinary depreciation assumes inherently the use of facilities for the period of eight hours a day. During a number of years we used our facilities in connection with this war program approximately on an average of sixteen hours a day. It is well known that machines working sixteen hours a day wear out or depreciate more than twice as fast as do machines which work only eight hours a day. The fatigue element enters into it very largely in the additional hours.

Q. What you mean is that if you determine an annual rate, an annual rate of three per cent. would

be proper for eight hours' use, but it would certainly be inadequate for sixteen hours' use a day during a year for the same machinery?

A. That is right, but I think 3.1 is not adequate for ordinary depreciation.

Q. I understand, but assuming it were, it would not be adequate for double the use in the same length of time?

A. That is right.

Q. Now in normal times, without regard to this special or overtime depreciation, what was and what had been Bethlehem's depreciation rate?

A. Approximately five and a half per cent.

BY THE MASTER:

Q. That is on the material that you were using here, that type of material?

A. On depreciable property.

BY MR. WOOD:

Q. That is on the class of property that is in your tabulation?

A. Yes.

Q. Is there a standard accounting practice governing the determination of normal depreciation in a shipbuilding plant?

A. No.

Q. Do you happen to know whether the rate of five and a half percent. used by Bethlehem in prewar times as representing normal depreciation, ever came under the review of the Government in any way, other than in connection with the settlement of these Fleet Corporation contracts?

A. Yes, it did.

Q. In what way?

A. The Navy Department adopted in their Man-

ual of Accounting, put out I think in 1922, our scale or schedule of depreciation rates.

BY THE MASTER:

Q. For the same class of depreciable property?

A. The Navy Department issued a manual of accounts to its accounting officers in 1922, and for the purpose of telling them approximately what a reasonable percentage allowance would be they printed our scale of rates into their accounting manual and described them as the depreciation rates of a large steel company.

BY MR. WOOD:

Q. Were those supposed to represent war-time conditions or normal peace-time rates?

A. Normal peace-time rates.

Q. And are those the rates resulting in your five and a half per cent. in peace-time which you have been speaking about, or are they some other rates?

A. No, they result in our five and a half per cent.

Q. Paragraph 3 of Article I of the American Shipbuilding contract provides for an allowance as follows, headed "Special Amortization."

BY THE MASTER:

Q. Before you get to that, I just want to ask one question to clear up a doubt. As I understand it, Mr. Geiss, so that there will be no question about it on the record, the depreciable property on which the item appearing in No. 7 of this schedule was taken, does not include any property at all which you have treated as either property scrapped, for which a credit was taken, or surplus material turned over to the Emergency Fleet Corporation?

A. Oh, no.

Q. The reason I ask that is because you speak in here of machinery and I thought that possibly, in view of the terms of these contracts, machinery might or might not be included, and I wanted to make it clear that it was not.

A. No, the figure used in Item 7 is property and plant values as taken from our books ex non-depreciable items such as land and other things.

Q. And also in the other things, the class of property that you have treated as property returned to the Fleet Corporation and property scrapped?

A. No, the scrap and surplus materials were scrap and surplus materials resulting from the construction of ships and had no relation to plant facilities.

Q. No relation to plant facilities at all?

A. No.

BY MR. WOOD:

Q. This 3.1 figure or per cent. which you have used there is a depreciation allowed by the Fleet Corporation in its audit of costs as reflected in the final estimated costs under these contracts; is that right?

A. Well, as I said before the Fleet Corporation allowed as cost approximately $1,000,000. As you see, of course, that is a round figure that just happens to work out to 3.1 per cent. of the weighted annual value of the plant used by the Fleet Corporation.

Q. I understand that. I did not mean to inquire whether their figure was derived by the application of 3.1 per cent., but your percentage over the 3.1 is the result of applying the depreciation actually allowed by the Fleet Corporation in its audit of

final costs to the plant values that you have taken; is that right?

A. Yes.

Q. Did Bethlehem protest the allowance of that depreciation figure?

A. No, depreciation was a long and complicated calculation. The Fleet Corporation surveyed our plants, they re-appraised them, they classified the facilities that they found in our plants—that is, by years of life—they applied their own rates and I suppose we were continually fighting. But this allowance of a million dollars, approximately a million dollars, was the net result of all that discussion as to depreciation.

Q. I direct your attention to Paragraph 3 of Article I in the American Shipbuilding contract, which provides that in the adjustment made thereunder there should be allowed to the contractor an item called Special Amortization, Item 3 reading: "Special Amortization. The sum of $4,500,000 of the total sum, estimated at $6,900,000, expended and to be expended by the contractor for plant expansion, alterations and additional equipment, understood to be a part of the cost but on which no profit is to be taken, which sum of $4,500,000 is hereby fixed and agreed upon by the parties as representing the fair proportion of the total plant expansions, alterations and equipment which by reason of over-expansion are and will be of no value to the contractor in its normal business and except for the purpose of carrying out this contract." Now in what way and in what item of your exhibit have you undertaken to adapt that provision to the Bethlehem contract ship program?

A. Item 9 of my statement covers that provision.

Q. Explain to us what figures you used, what sort of a calculation you made, and why you made it.

A. The Fleet Corporation installed certain facilities in our yards at a total cost to them of $4,825,415. That was the total they would pay under the authorizations. Bethlehem paid $627,155 to complete those facilities which were started by the Fleet Corporation, to make them of value. Bethlehem on its own account during 1917 and 1918 installed additional facilities in its yards to a total cost of $6,145,931. Bethlehem also charged to operating expense accounts items of cost which the Fleet Corporation in its audit decided should have been charged to property and plant, and such items were disallowed from the costs of the ships by the Fleet Corporation. Therefore, taking the expenditures by the Fleet Corporation—and, by the way, in explanation of that item I assumed it was only fair, if we were going to claim amortization, to add on to the figure upon which amortization was to be based the facilities installed and paid for by the Fleet Corporation, although under the contract with the Fleet Corporation they were expected to pay them themselves—so, adding the value of the Fleet Corporation facilities and the amounts expended by Bethlehem in completion of those facilities, the value of the Fleet's proportion of the use made by them of the facilities installed by Bethlehem on its own account, and adding also the items charged by Bethlehem to operating expense and disallowed by the Fleet Corporation, gives us a total of $10,767,916, which represents plant extensions during 1917 and 1918. That figure is comparable with the $6,900,000 mentioned in the American Ship contract.

Q. Why were these capital expenditures made during this period?

A. We started in 1915 and 1916 to enlarge our shipbuilding facilities, foreseeing a large use of such facilities because of the war. We hoped to make many millions out of our shipyards in securing contracts from foreign countries.

Q. I am afraid you do not quite understand my question.

A. I have not finished.

Q. I have not gotten back yet to 1915 and 1916. I am going back to that in a minute, but why were these capital expenditures, which I understand from your exhibit aggregate $10,000,000, made in 1917 and 1918?

A. I am leading up to that.

Q. All right, Sir, go ahead.

A. In 1917 and 1918 expenditures made by Bethlehem on its own account were partially in completion of a program set out in 1915 and 1916 for this large expansion. In spite of the fact that we contended with the Fleet Corporation that we would spend no more of our own money in the extension of plant facilities, we did actually spend in 1918 $1,592,807. That was partially on new work and partially to complete work already begun.

Q. I understand that, but for what purpose were the capital expenditures made? In order to execute these contracts? Is that what you are trying to say?

A. They were made for the purpose of executing any contracts, and we felt, at least I felt, that in attempting to apply that clause in the American Ship contract which you just read, it was fair to

take similar expenditures made by Bethlehem for the purpose of a war construction program.

Q. That is what I am trying to bring out. They were capital expenditures that were made in connection with the war program?

A. Yes, they were. Those facilities were worth no more to us at the end of that program than they were to the American Ship. That is, we had the same loss to sustain that they did.

Q. The same over-expansion on account of the war program?

A. Exactly the same.

BY MR. HALLETT:

Q. You do not know about that?

A. It just naturally follows. Since shipbuilding collapsed everywhere after the war, it naturally follows that there was not any shipyard which needed the facilities which were put in to take care of the war program.

BY MR. WOOD:

Q. You have made a division of those capital expenditures on some sort of a percentage basis, and you have made somewhat the same sort of a division of the depreciable property on which you calculated your depreciation item. Will you tell us how that was made and what those percentages represent?

A. Yes. Going back and explaining the percentages as used by me in the depreciation item, which percentages are the ones used on the amortization item as well, as I explained before—

BY THE MASTER:

Q. The same explanation applies to this as applied to the other?

A. I should like to make just a little fuller ex-

planation. Take the Fore River plant, in which I stated that thirty per cent. of the plant was available for commercial work, and that seventy per cent. of that portion of the plant available was used by the Fleet Corporation for a period of two years. Now that seventy per cent. is supposed to cover contract ships only. What I did to obtain the percentage, I took the direct labor in the yard, I assumed those same percentages of labor as I had used for plant, and I then took the direct labor on the contract ships, to which I added inter-plant work in our five plants. We did work at one plant for ships being built at another plant. For instance, Moore plant constructed marine auxiliary machinery for many of the ships built at other plants. Harlan plant built lifeboats and furnishings. Sparrows Point built engines for other ships. So that while one ship was laid down at, say, Fore River, Fore River did not do all the work on that ship. It obtained a certain portion of the ship from other of our plants. Likewise, Fore River did work for ships laid down at one of the other plants. So that that figure of seventy per cent. at Fore River, and the other percentages mentioned at the other plants, is the proportion of direct labor on the ships built at that plant plus the direct labor in the inter-plant work which that plant did for the other plants.

BY MR. WOOD:

Q. Speaking of Fore River again as an example. Fore River was doing work for the Navy and doing work for the Fleet Corporation?

A. Yes.

Q. And first you split these capital expenditures at Fore River between the proportion applicable to

the Navy program and the proportion applicable to commercial work; is that right?

A. Yes.

Q. And then you applied to that proportion representing the amounts attributable to commercial work, or assignable to commercial work, that proportion which the direct labor cost in commercial work at Fore River Yard devoted to its contract ship program was to the total direct labor?

A. That is right.

Q. In this calculation of amortization you have included the expenditures made by the Fleet Corporation, as I understand it; is that right?

A. Yes, I have.

Q. And that is entered into your gross figure of $170,000,000; is that correct?

A. Yes.

Q. Have you credited the Fleet Corporation, in making the final adjustment here as to the amount remaining due under this attempted adaptation of the American Shipbuilding contract, with the advances made by it or payments made by it or assumed by it in connection with the expansion program?

A. Yes. Item 10 on my exhibit allows the credit for the payment made on plant facilities, made by the Fleet Corporation.

Q. What would the result have been if you had disregarded the advances made or expenditures assumed by the Fleet Corporation in this plant expansion program altogether, in determining your amortization allowance of sixty-five per cent., and confined that allowance to that percentage of the expenditures made by Bethlehem only?

A. The net result would have been an additional

cost to the Fleet Corporation equal to thirty-five per cent. of $4,632,212.

Q. That is, it would have increased the total amount resulting from this adaptation if you had confined your amortization adjustment to Bethlehem's own expenditures?

A. It would not have increased the amount payable to Bethlehem. It would have increased the cost to the Fleet Corporation if we had not taken back and assumed ourselves thirty-five per cent. of the cost of facilities installed by the Fleet.

Q. Did Bethlehem make any capital expenditures in plant expansion at its shipbuilding plants prior to 1917?

A. It made huge expenditures in 1916 and 1915.

Q. For what purpose?

A. For the purpose of expanding our shipyards to take care of what we foresaw would be a tremendous shipbuilding program at high prices.

Q. And a shipbuilding program brought about by what?

A. By the War in Europe.

Q. And those facilities, of course, were used in the carrying out of this program?

A. Yes.

Q. Were Bethlehem's shipbuilding plants in 1915, and prior to the making of these expenditures in 1915, 1916 and thereafter, of sufficient capacity to take care of normal peace-time demands?

A. Yes, to the extent that we were engaged in ship building. We bought two new shipyards in 1916. We bought the Sparrows Point Yard and we bought the Alameda plant at San Francisco, in addition to which we expanded the plants already owned by us.

Q. I am not speaking now of what you may have paid for some existing yard that you bought, but what I am asking you is whether the capacity of the yards which you had in 1915, and the capacity of any additional yards which you bought during that period, were sufficient to meet normal peace-time requirements without this expansion program and the making of these capital expenditures?

A. Yes, sir, they were.

Q. What is the fact as to the demand for the use of these expanded facilities after the termination of the War?

MR. HALLETT: I think that is going pretty far afield. I will admit that there was a slump in 1922 in all shipbuilding. I do not see that that is at all material in the comparison of a contract made in 1918.

THE MASTER: What is the purpose of the offer, Mr. Wood? Do you think it is material?

MR. WOOD: Although that is a matter of common knowledge, this paragraph 3 which we are endeavoring to adapt here, as we are interpreting it, provides for the absorption by the Fleet Corporation of sixty-five per cent. of the amortization of plant expansions which are assumed to be of no value to the contractor in ordinary peace times. My interpretation of that contract may be entirely different from Mr. Hallett's, but that is the way I read it. Now Mr. Geiss has told us of large capital expenditures which we think are of similar character, made not only during 1917 and 1918, but beginning with 1915 and 1916, to provide a capacity due to war-time requirements, whether we were in

the war or not, with the result that at the end of the war we had yards of a certain capacity by reason of this expansion. Now I am asking Mr. Geiss what is the fact as to the utility of those expanded facilities at the termination of the war.

BY THE MASTER:

Q. May I ask whether, as a foundation for the comparison, the amortization allowance under the American Shipbuilding contract related to facilities installed solely for the Fleet Corporation's program, or for others? Because it seems to me that until we have the basis for comparison, we may be comparing two totally different things. If the Fleet Corporation's allowance applied to all of its war-installed facilities, that is one thing; but if it applied solely to those for the Fleet Corporation contracts, it may be another thing.

A. I am making no attempt to secure amortization on the 1915 and 1916 expenditures. I am asking only for 1917 and 1918.

Q. I see; and those expenditures in 1917 and 1918 were for the purpose of meeting the extra demands upon your then plant facilities for war purposes?

A. Undoubtedly.

Q. And if they had not already been installed by you, it would have been necessary, in order to maintain the program demanded by the Emergency Fleet, to install them as soon as possible?

A. Yes.

Q. So that what you are asking an amortization on does not exceed the facilities required to meet the ship program of the Emergency Fleet Corporation?

A. That is right.

BY MR. WOOD:

Q. In fact, it does not equal it, does it?

A. No.

BY THE MASTER:

Q. But it does not exceed it? That is all I am interested in.

A. No.

THE MASTER: Now, as I understand it, Mr. Wood's question, Mr. Hallett, was directed to whether or not the facilities on which the amortization is taken in this tabulation were or were not usable thereafter for the commercial needs of the plant, and it seems to me that that is a perfectly proper question. Whether the witness can answer it or not, or whether you want to object to his competency, is another question.

MR. HALLETT: I do not care. Go ahead. I will be glad to have it all gone into.

(Original question read, as follows: "Q. What is the fact as to the demand for the use of these expanded facilities after the termination of the war?")

A. There was a complete collapse of shipbuilding shortly after the war. It is beginning to recover slightly now, but for many years our shipbuilding yards have been practically idle. From a force of approximately 70,000 men during the height of the war construction we have dropped to below—well, I will say approximately 8,000 men.

BY MR. WOOD:

Q. Your item of $6,982,424 represents what?

A. Represents the amount which this exhibit seeks to show would be due us even though our con-

tracts were put upon the same basis as the American Ship contract of October 24, 1918.

Q. After crediting the Fleet Corporation with all payments and with the amount of these capital advances?

A. That is right.

Q. Now there are certain items there under Paragraph 11 which you have added to that. What is the significance of those items?

A. They have nothing to do with the American Ship comparison, and the addition of those items was merely an attempt to include in this one statement the entire amount due Bethlehem both on its contract ships and on other items, such as requisition ships and cancelled ships.

Q. That is to say, there are involved in this case, not simply the payments due under the contracts, but certain amounts alleged to have been due on account of requisition ships and in respect of other matters which go to make up the total claim of Bethlehem?

A. That is right.

Q. And these additions are for the purpose of contrasting what that total claim would be if the contract ship program was adjusted to the American Shipbuilding contract and the other items added, as contrasted with the claim actually made?

A. That is right.

Q. I do not know, Mr. Geiss, whether it is a fact or not, but I rather think it is, that some of these added items in which you set forth certain amounts have been the subject of stipulation and adjustment, which changes the totals.

MR. HALLETT: Oh, yes, that is understood.

A. Some of them have, yes, sir.

Q. And in so far as it changed the total here, it would also change the comparative total in the total claim made?

A. Yes.

MR. HALLETT: I will make a statement for the record, if you like, that so far as that Item 11 goes, we are taking no interest in those items, because it is understood they have been changed by stipulation, and the statement, so far as it goes from the Government point of view, would only be considered down to the item $6,982,424..

MR. WOOD: In order that the Master may understand the significance of this exhibit, and without attempting to tie myself down to any figures or bind my friends on the other side, to any figures, I understand, subject to correction, that in round numbers under the original and revised stipulations the payments agreed to be due to Bethlehem on the contract ship program, under the terms of the contract as interpreted by Bethlehem, are approximately $5,200,000, and that the significant figure in this exhibit to contrast with that is the figure of $6,900,000. There are, as the Master knows, disputes not only as to the right to recover under the contracts at all, but also as to their interpretation in certain instances, and this comparison of figures is not intended to be exact, but it gives the relation between the claims made under the contract and what Mr. Geiss has testified to as the amount payable under the adaptation to the American Shipbuilding settlement.

THE MASTER: Am I to be asked to take this testimony for the purpose of determining the basis of interpretation of the two contracts by comparing the Bethlehem contract with the American Shipbuilding revised contract or not?

MR. WOOD: No, sir.

THE MASTER: As I understand then, it is simply to show that if the Bethlehem claim were adjusted on the basis on which the American Shipbuilding Company claim was adjusted under the revised contract, it would amount to $6,900,000?

MR. WOOD: The only purpose, Mr. Master, of bringing this comparison into this case at all is this, that, as I understand it, although we do not know altogether what is in the minds of our adversaries, one of their contentions is that Mr. Schwab should have brought about a revision and readjustment of the Bethlehem contracts during his term of office as Director General. They have offered in evidence a memorandum of his to Mr. Hurley relating to the adjustment of this American Shipbuilding contract, which, I think the evidence shows, is the only contract that was readjusted, at any time during Mr. Schwab's term of office with the Fleet Corporation, with any ship builder, and our purpose here is, as well as we can, to put before the Master what the result would have been of such readjustment as we understand them to say Mr. Schwab should have brought about in our contracts.

BY MR. WOOD:

Q. Mr. Geiss, have you prepared a statement

showing the average profit on manufacturing cost made by representative industries in normal years?

A. Yes.

Q. I hand you a paper introduced at the last trial as Exhibit B-10, and ask you if that is the paper to which you refer?

A. Yes, it is.

Q. Will you please tell us the sources from which the facts stated on this series of papers so marked were taken?

A. Many of them were taken from Moody's Manual; others were taken from annual reports sent out by the companies.

Q. Now the first sheet on that Exhibit is a summary of the attached sheets which are in themselves self-explanatory and set forth the detail on which the summary is based; is that correct?

A. Yes.

Q. And am I right also in my understanding that each of the supporting sheets shows there itself the source of the information?

A. Yes.

MR. WOOD: We offer the Exhibit so described as Exhibit B-10.

MR. HALLETT: Objected to on the ground that it is entirely irrelevant, incompetent and immaterial.

THE MASTER: The Exhibit will be received subject to the objection and an exception allowed to the Government.

BY MR. WOOD:

Q. Have you also made up a statement of the manufacturing profit realized by the United States

Steel Corporation during the years 1916, 1917 and 1918?

A. Yes, sir.

Q. I hand you a statement introduced at the previous hearing marked B-11 and ask you if that is the statement to which you have referred?

A. Yes, sir.

Q. From what source was the information contained on that statement derived?

A. From the annual reports sent out by the United States Steel Corporation.

MR. WOOD: I offer the Exhibit in evidence under the same exhibit number that was introduced at the previous hearing.

MR. HALLETT: It is objected to on the same ground as to Exhibit B-10.

THE MASTER: The exhibit will be admitted subject to the objection and an exception allowed to the Government.

BY THE MASTER:

Q. I note in this Exhibit B-11 of the United States Steel Corporation that for the years 1917 and 1918 the profit is taken on a basis which excludes Federal Income tax. Does it also include a deduction of war profits?

A. Well the Federal Income Tax, by that is meant all income tax paid to the Federal Government, whether income or excess profit.

Q. So that the excess profit tax is not taken off before this profit is arrived at?

A. I would say that all taxes have been deducted.

Q. What I wanted to find out whether you are also excepting the excess profits tax?

A. Yes. All taxes are treated alike.

BY MR. WOOD:

Q. All Federal taxes are excluded, is that what you mean?

A. All Federal taxes are excluded from the cost.

BY THE MASTER:

Q. That is to say from this profit there must be paid the Federal Income and also the excess profit tax? A. Yes, sir.

BY MR. WOOD:

Q. Mr. Brown, in the course of this testimony, offered some Exhibits, B-3 and B-4, in which he undertook to make a comparison of the cost to the Fleet Corporation of the ships built by Bethlehem under the contract prices claimed by Bethlehem and the cost of ships built by other shipbuilders during the same period. You have seen those exhibits, have you not? A. Yes.

Q. And I think he said that so far as Bethlehem Ship was concerned that page of the Exhibit, whichever it may be, containing those figures concerning Bethlehem Ship, was furnished to him by you? A. Yes.

Q. Will you tell us from what source those figures were taken?

A. From the stipulation. I don't know the exhibit number.

Q. From which stipulation?

A. From the stipulation as originally made up and prior to the amendments thereto.

Q. Government Exhibits A and B, is that right?

A. Yes.

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Vol. III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 8

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, ET AL.

No. 9

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

vs.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 22, 1940
CERTIORARI GRANTED OCTOBER 14, 1940

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Q. It does not include the effect of the revisions subsequently made by other or supplementary stipulations? A. No, it does not.

Q. If effects were given to such revisions what would be the result? Would it increase or decrease Bethlehem's prices?

A. It would decrease Bethlehem's claimed prices.

Cross Examination

BY MR. HALLETT:

Q. What was the purpose of submitting this Exhibit B-12 to the Fleet Corporation?

A. The purpose of submitting it to the Fleet Corporation was that it might be useful in our many attempts to reach a settlement with the Fleet Corporation.

Q. In other words, as I understand it, you made a proposition that you would settle on the 10 per cent. basis arrived at in the American Shipbuilding Company, program, was not that it?

A. I think I did make a proposition one day that Bethlehem would be entirely willing to settle its claim with the Fleet Corporation upon the basis of the American Shipbuilding Company's contract of October 24, 1918, if the contract was interpreted in accordance with the Exhibit prepared by me and which is now before you.

Q. And it was only on agreement to interpret that contract in the way you have now interpreted

the contract as shown by Exhibit B-12 that you would accept the American Shipbuilding Company settlement basis; is that right?

A. I think that is substantially right, yes.

Q. You were familiar, were you not, with the memorandum of Mr. Schwab to Mr. Hurley of October 2, 1918, G-160, at page 492 of the Documentary Evidence?

A. I think I am, but may I see it, please? Yes, I am familiar with it.

Q. And, so far as you have been led to believe, American Ships Exhibit B-8 was a contract which was the result of the agreement outlined in Exhibit of October 2nd, 1918, G-160; is that not so?

A. I have always understood—

MR. WOOD: I think it is already in the record. This letter was not there and both Mr. Piez and Mr. Schwab testified with respect to the relation between this contract and the memorandum.

MR. HALLETT: Will you accept that the one came from the other?

MR. WOOD: I stand on what the record shows.

MR. HALLETT: I am trying to find out what this man understood.

MR. WOOD: Go ahead.

BY MR. HALLETT:

Q. What was your understanding?

A. I have always understood that the contract with the American Ship was revised because of the discussions between Mr. Farr and Mr. Schwab and I have never been told nor have I ever known who drafted the contract and who included the clauses which are included therein, or whose idea it was to

write out a contract so much more liberal in its terms than our contract. I don't know.

Q. Do you mean more liberal than your cost plus contracts?

A. Our so-called ship contracts, yes.

Q. Do you know anything about the accounting system of the American Shipbuilding Company?

A. Nothing whatever.

Q. Do you know anything about the manufacturing situation of their plants in 1917, 1918 and 1919?

A. I was in some of their plants but I don't know how the result of such manufacturing was recorded on their books.

Q. You don't know whether or not this contract B-8 was an attempt to write up a contract which was commonly known as a cost plus 10 per cent. contract, do you?

A. No.

Q. Do you maintain that this B-12 would result in Bethlehem getting only cost plus 10 per cent. profit?

A. No. I don't make any claim as to the amount of profit Bethlehem would have made under that type of contract. I merely attempted to show the result which would have come about had I applied the American Ship contract provisions to our shipbuilding program.

Q. Do you want the Master to understand that if Mr. Schwab had come to the same agreement with Bethlehem in 1918 that he came to with Mr. Farr of the American Shipbuilding Company that the contract should be revised to a cost plus ten per cent. profit basis, Bethlehem would claim these items?

A. I didn't say that.

Q. You don't want him to understand that?

A. I don't want him to understand except just exactly what the statement sets forth and nothing more than that.

Q. You know absolutely nothing about the situation of the American Shipbuilding Company with respect to their accounting process, do you?

A. No.

Q. You have no means of knowing that when an allowance was made to them of 25 per cent. for overhead that was not an allowance to reimburse them for their actual overhead, do you?

A. I have no such knowledge.

Q. If you secured an agreement to get 25 per cent. overhead on the same form here it would have resulted in considerable extra profit to Bethlehem, would it not?

A. Extra profits over what?

Q. Over 10 per cent. of the cost?

A. I think I may safely say that 25 per cent. of direct material and direct labor is something more than our actual cost.

Q. Have you figured out how much?

A. Not definitely, no, sir.

Q. When did you make this Exhibit B-12 up?

A. As I stated before, approximately three and a half years ago I am only guessing.

Q. You submitted it somewhere around June of 1926, as a matter of fact, did you not?

A. It may be.

Q. And you presented it in the hearing before Mr. Roberts, did you not?

A. Yes.

Q. You never have been interested to find out how much your item of $142,658,314. was in excess

of the stipulated cost of labor, material and overhead?

A. I have been interested for my own information. I felt that it had nothing to do with the comparison.

Q. And you did not care how much profit might be in such settlement?

A. No, I didn't care.

Q. You were not interested in the profits that might be in the settlement?

A. No.

Q. You were simply trying to show that if Bethlehem was about to secure the same kind of a contract that the American Ship secured they would receive the items that you set up here?

A. That is right.

Q. Did you notice in Article 1, paragraph one, defining cost of the contract, Exhibit B-8, that it provides that the cost of all such ships, whether heretofore or hereafter constructed, such costs shall be calculated according to the established accounting practice of the contractor, material, labor and freights and other elements of cost being computed at the rate actually paid for and shall include 25 per cent. on the cost so computed for (A) General operating overhead; (B) Special depreciation for additions, alterations and equipments of plants due to excessive war costs.; did you notice that particular section or part of the 25 per cent. for depreciation?

A. Yes.

Q. Have you made any split in your claim for 25 per cent.?

A. No.

Q. Did you also notice that on item 2, relating to profit, that there was a profit of 10 per cent. upon

such cost and overhead but not upon special depreciation?

A. Yes, I noticed it.

Q. You made, however, a claim of 10 per cent. on the total cost of your contract material, labor and overhead of 25 per cent.?

A. Yes, I had no means of splitting. I had no means of telling what the item B under article 1, item 1, what percentage that was of the 25 per cent.

Q. So, not having any information, you made no allowance but claimed the full 10 per cent. on your total of material, labor and overhead?

A. No, sir. Naturally that item B is a very small proportion of the 25 per cent. Its very nature makes it apparent it must be a small percentage. I don't know how small. I could have used two or three percent. or some other percentage to which I should not have added 10 per cent.

Q. The proposition that you submitted in that form of B-12 to the Fleet Corporation was not accepted, was it, by the Fleet Corporation?

A. It was never officially submitted as a means of settlement. It was merely in all discussions, there were various discussions of an attempt to reach a settlement, this particular Exhibit was prepared by me and laid down on the desk for what it was worth.

Q. And another suggestion was made to you; was it not, by the officials of the Fleet Corporation, that the excess items be taken out of this submission and see how you came out with a 15 per cent. profit on your actual cost?

MR. WOOD: Objected to. I am perfectly willing to have the whole story of the effort by Bethlehem to settle this controversy with the Government go on record but I am prepared

to say now that if it does it will show the most disgraceful performance on the part of the Government that has ever come to my attention.

MR. HALLETT: I challenge that statement.

MR. WOOD: We say that the negotiations are of no materiality to anything introduced here.

THE MASTER: As the Master recollected Exhibit B-12 was offered in evidence and was a comparison between the assumed basis of settlement with the American Shipbuilding Corporation and what would have been realized to Bethlehem had a similar basis been adopted in adjustment with Bethlehem on the interpretation of the American Shipbuilding Contract given by this witness, and it was offered for the purpose not of showing an endeavor to reach a settlement with the Fleet Corporation, but to show what the result would have been to the Shipbuilding Corporation had a similar contract with such an interpretation been entered into by the Fleet Corporation with the Bethlehem pursuant to Mr. Schwab's instruction. That was the understanding of the Master as to the purpose of the offer and of the testimony relating to this Exhibit. The Government has gone beyond that and has asked the witness what use he had made of the Exhibit in his discussions with the representatives of the Fleet Corporation. Now, to the extent it has gone there has been no objection. If an objection had been made the Master probably would have regarded that as not proper cross examina-

tion, and it seems to the Master that if we are going further into the discussions between this witness and other representatives of Bethlehem and the representatives of the Fleet Corporation concerning the settlement, that we have got to go into all of them or else it is of no value, anywhere in showing the general atmosphere and, so far as the Master is concerned, it is of no value at all to a decision of this case because it all happened after the facts we have to consider here.

MR. HALLETT: I realize that and I think Exhibit B-12 has no relevancy or competency in this case, but the witness has testified that these figures here were taken from the stipulation. He later submitted another proposition which contained apparently figures based upon the same set up but which were radically different and in challenging these figures here we are getting ready to offer this second statement of his which was made within two or three weeks of this one.

THE MASTER: I think this is probably a fair way to deal with the situation. The testimony that the Master has before him shows that the witness' figures for comparative purposes are based upon certain assumptions concerning the American Shipbuilding Company contract, conceded by the witness to be subject to differences of opinion. If the actual figures of the settlement with the American Shipbuilding Corporation are of use to aid the witness in making his comparison and they are available—

MR. HOWARD: I think you have a misun-

derstanding: We are not putting in any figures of the American Shipbuilding Company settlement because that I don't see would be any aid at all to you.

MR. WOOD: They were considerably higher.

THE MASTER: You are both assuming what the Master cannot assume. Here is the point. It seems to me, at least in the state in which the case is now before the Master, that the Government's charge of impropriety at least on the part of Mr. Schwab in failing to adopt the same policy toward Bethlehem that he insisted on having Mr. Hurley adopt toward the American Shipbuilding Corporation, is an issue that must be met by Bethlehem as best it can if it deems it important and, apparently, Bethlehem deems it important at least to present some testimony to show what the effects would have been had Mr. Schwab adopted the same policy towards Bethlehem. Now they are in the position, as I understand it, of being forced to assume certain facts which are not easily available to them or at least have not been made available to them by either the Fleet Corporation or the American Shipbuilding Corporation. To the extent that their interpretation of the contract is made the basis of these figures it is, of course, purely speculative as to whether that is the proper or the improper interpretation and goes to affect the value of their comparison. If the Master is forced to reach his own interpretation of that contract and adjust these figures on his interpretation it may be that a higher or lower result could be reached. Now whether it is important to the Government to

combat the effect of this along the lines of these assumed interpretations by this witness is for Government's counsel. To the extent that you can discredit the comparison the Master will receive any testimony that you choose to offer or let you examine this witness in any way that you please. I think it would be wise, however, not to go into all the various negotiations.

MR. HALLETT: I had not intended to but merely just to lay the foundation leading up to a presentation by him of entirely different figures of cost.

THE MASTER: Suppose we try to do that without going into the detail of the settlement.

BY MR. HALLETT:

Q. As I understand it the figure of direct labor and material cost used by you in iteni No. 1 of Exhibit B-12, derived by you from the stipulated figures?

A. I said they were taken from the same sources as the stipulated figures. They are, of course, only a portion of the stipulated figures. They are the material and direct labor portion.

Q. Well the figures in the stipulation of cost would be comparable, would they not, to the combination of items 1 and 2 in your Exhibit B-12 except for the addition of the $1,020,719.00 added for scrap?

A. No.

Q. They would not?

A. No, because in the one instance, in the stipulated figures the expense item is the actual cost to Bethlehem.

Q. And what else have you in one and two that does not appear in the stipulated figures?

A. The stipulated figures are made up of, the direct material, direct labor, actual plant overhead expense, actual A. & G. expense, and depreciation. The total of those items result in the figure which is disclosed in the stipulation. That could not be the same as the total of items 1 and 2 of my statement since we have departed from actual costs when we use 25 per cent. of direct labor and direct material to establish the other items of cost.

Q. Then let me put it this way. A comparison of the stipulated figures of cost for these contract ships, adding to those stipulated figures the sum of $1,020,719., with your item of $142,658,314., which is the combination of one and two, would indicate the excess that is contained in this as compared with the stipulated figures; would that be correct?

A. It would indicate the difference. If there was an excess it would indicate the excess and if there was a loss it would indicate that.

Q. You don't know whether there is an excess or not?

A. Yes, I understand it is an excess.

Q. Do you know whether it is a substantial excess?

A. I think it is substantial.

Q. And you have claimed a profit of 10 per cent. on the total of one and two without making any allowance for any special depreciation that may be included in the 25 per cent.?

A. That is right.

Q. On item No. 4 which is 1½ per cent., that is largely what you call obsolescence, or amortization, that 1½ percent. allowance?

A. I won't attempt to define what it is. The contract states what it is for.

Q. You say that you used here base price plus fee. Now I don't know as that can be entirely accurate because I noted you have contract 182 in here. As I remember contract 182 was a cost plus a fixed amount of 10 per cent.?

A. Yes, it was.

Q. And how did you arrive at the $8,960,000.?

A. I think you will find that contract 182 covered two ships. Contract 465 covered six similar ships, and since there was no base price plus a fee in contract 182 I used one-third of $26,880,000., which is the amount I used for contract 465.

Q. Already having a contract on 182 of cost plus 10 per cent. with a definition of cost in it you considered that if you had had all of your contracts changed to approximately the cost plus 10 per cent. basis, you would be allowed this in addition to the contracts you already had?

MR. WOOD: If that is your interpretation let it go but it certainly is not what the witness said.

BY MR. HALLETT:

Q. Now, of course, the surplus material the Government had paid for?

A. Oh yes.

Q. And they had also paid for the scrap which is included in item 1?

A. They paid for the material from which the scrap resulted, yes.

Q. So that under the Bethlehem situation, the granting to Bethlehem of the scrap and the surplus

material would be an additional allowance to Bethlehem, would it not?

A. Yes.

BY THE MASTER:

Q. Speaking of those two items, as I understand it, the witness has assumed that the Fleet Corporation also paid for that same material in its dealings with the American Shipbuilding Corporation. You have assumed that?

A. Oh yes.

Q. You don't know whether it is a fact or not?

A. The American Ship contract as I recall had allowed the American Shipbuilding Company to retain the scrap and surplus material. It was a different thing in our case because we had to credit the value of the scrap.

Q. I understand that perfectly but you don't know whether the American Shipbuilding Company actually purchased that themselves or whether it was purchased on the same basis that it was purchased in your case, by the Emergency Fleet?

A. I had not from a reading of the contract. They said that the costs usually cover all direct labor and that was the material from which scrap and surplus resulted.

Q. So it is true that the same method of purchase was adopted by the Fleet Corporation in the American Shipbuilding case as was adopted for you?

A. Exactly the same.

BY MR. HALLETT:

Q. Originally with the American Shipbuilding Company those were lump sum contracts, were they not?

A. Yes, they were.

Q. And under lump sum contracts the shipbuilder itself does its own purchasing of material?

A. Yes.

Q. You don't know what the situation was in October 1918 as to how much purchasing they had done at that time, do you?

A. No.

Q. You don't know whether or not they may have made such purchases as indicated that they would have some surplus material on hand, do you?

A. No.

Q. Bethlehem was building requisitioned ships, were they not, for the Government?

A. Yes.

Q. At Fore River, Moore, Harlan, Sparrows Point and Union?

A. Yes.

Q. Had you any indication or any facts to show whether or not your raw material inventories were not used on these ships that you had in hand on December 31, 1917?

A. It is entirely likely, and it must be true that the requisitioned ships used some of this material. It is merely a formulae adopted by me to give expression to what I thought was a proper interpretation of that clause in the contract, and, as I previously stated, it is not in the contract, and I didn't know what to use so I just used this.

Q. Did Bethlehem have any plant inventories?

A. What do you mean by plant inventories?

Q. Inventories of their different plant equipment and that sort of thing?

A. Well we knew the items of equipment contained in our property plant account. The materials I am speaking of here are entirely raw materials.

Q. I understand that but I am asking you if Bethlehem did not maintain—it may not have been called an inventory—but it had a plant account, didn't it?

A. Oh yes.

Q. And in the course of the audit with the Fleet Corporation the plant account was gone all over, was it not?

A. Yes indeed, very thoroughly.

Q. And there was considerable dispute between you and the Fleet Corporation as to what should have been in that plant account and what was in there?

A. Yes.

Q. And there was a readjustment of that plant account, was there not?

A. Yes.

Q. It may be possible, that with the American Ship contract, inasmuch as this adjustment is contained in a depreciation, that it meant an adjustment of inventory values of the plant account; is that correct?

A. No, I wouldn't think that that would be the natural interpretation.

Q. Have you given us any allowance for the amount of this inventory that might have been used on these requisitioned ships?

A. Mr. Hallett—

Q. Answer yes or no.

A. I can't answer it yes or no. I told you twice, I think, that this was merely a formula adopted by me.

Q. Well you charged 100 per cent. at Moore, Harlan and Sparrows Point, on the contract ships, did you not?

A. No.

Q. You did not?

A. I said a hundred per cent. of the plant facilities was available for commercial work.

Q. No, I am talking about adjustment of raw material inventory?

A. Yes.

Q. As I understand it, these percentages of use which you applied in the depreciation and amortization were arrived at by you by comparison of the total contract labor at the plants with the contract labor charged to these contract ships plus the contract labor charged to inter-plant work?

A. That is what it is supposed to be.

Q. Was any of that interplant work chargeable to the requisitioned ships?

A. Well if it was I am not supposed to have used it. I was not intending to use it if it was. This percentage is supposed to be what I stated it to be.

Q. Do you know whether it was?

A. I was asked at the last hearing whether this percentage included requisitioned ships and I recall my answer was they were not intended to include requisitioned ships, and then later, in answering a question to me by the Master whether they were or were not included I said, "I will state definitely they are not included."

Q. Are you finished?

A. No. The figures, of course, are approximate. The use is approximate. After all I could not pin it down to a definite per cent., nor could I pin it down to definite time or number of hours. The interplant work is very complicated, the records of them were no longer in existence. As I said, I took a direct wage of the ship and added to it something which I

supposed would cover interplant work. I am not claiming that the figures are 100 per cent. right.

Q. In the contracts which the Fleet Corporation entered into with Bethlehem and in the negotiations for those contracts it appeared that Bethlehem refused to pay out for plant extensions necessary for these ships any money of its own, did it not?

A. I think we made that statement to the Fleet Corporation.

Q. And, as a result of the position taken by Bethlehem, the Government spent some $4,825,000.; is that not right?

A. It actually spent $4,632,000.

Q. And those were the plant extensions which Bethlehem said were necessary for the construction of these ships in order to get them out as the Government wanted them; is that right?

A. I think the contract speaks for itself, but I think that is approximately right.

Q. The Bethlehem, spent on these same items, for which it was however not reimbursed by the Government, $627,000.?

A. That is right.

Q. And then, as I understand it, during the progress of the work and as a result of the re-audit, approximately $1,800,000. worth of items were taken out of overhead and transferred to capital account in our agreement with Bethlehem?

A. What actually happened in the re-audit or the audit of our operating expense account, there were items of cost which the Fleet Corporation disallowed. They said the reason for this disallowance was that they were not proper operating expense items but were actually capital items. We never altered our books. That cost is still charged by us

against the cost of the ships through operating expense. We never capitalized the amount the Government took as capital, but this $1,800,000. was an attempt by me to draw from the disallowed cost list the items thrown out on the theory that they should be capitalized.

Q. And this $3,508,895. expenditures made by Bethlehem in connection, in 1917, with improvement and enlargement of their plant, and also in 1918 for the extraordinary work they were doing but which was not required for the particular contract ships; is that right?

A. It was put in there for a war program.

Q. And you started a war program back in 1914 or 1915, did you not?

A. Yes.

Q. And when you speak of a war program you mean the increase or the gravy which the shipbuilders got as a result of the war; is that right?

A. Well I don't know about the gravy. Undoubtedly we did increase our shipbuilding facilities to prepare for contracts for ships which we hoped we would get as a result of the war in Europe.

Q. And when did the slump come?

A. During 1919 and 1920 there were a few contracts for domestic merchant tonnage by some of the oil companies. Upon the completion of those few ships, which were built in 1919 and 1920, there was a complete collapse of shipbuildings, which occurred, I should say, in 1922 or thereabouts.

Q. Did Bethlehem acquire any other plants at that time or shortly after that?

A. It has since acquired certain repair yards.

Q. When?

A. I will say seven or eight years ago. Sometime after the war.

BY THE MASTER:

Q. Your answer to one of Mr. Hallett's questions makes a confusion because of your answer to one of mine. I understood you to say in dealing with this amortization item that the amount on which you took the 65 per cent represented the total expended in 1917 and 1918 to afford facilities needed for the building of the ships required to meet the Emergency Fleet Corporation's program?

A. I am sorry about it. Of the total expenditures made by Bethlehem on its own account in 1917, 1918 and 1919, I took the percentage of such expenditures which were used for the Fleet Corporation ships and so I did not take the entire expenditure. I only took a portion of it and claim amortization of that portion which were used by the Fleet Corporation.

Q. That is my understanding, that the total which you have here does not represent the total of the expenditures for plant increase?

A. Yes, it does represent the total of our plant expenditure. It is all plant expenditures but I am not claiming amortization on the entire expenditure. I am claiming it only on the proportion of such facilities as were used by the Fleet Corporation, and your total which was used for the Fleet Corporation is $10,767,916.?

A. That is true, but Bethlehem's expenditures during 1917 and 1918 is $6,145,931., do you notice?

Q. But I still get back to my original question and as you now answer it it is the same although I understood it different when you were answering Mr. Hallett. Let me put it this way. Am I correct in my

understanding that in the total figure which is represented in this chart B-12 there is no amortization claimed except the amortization upon the capital investments in plant facilities required for building of the ships for the Emergency Fleet Corporation?

A. That is right.

BY MR. HALLETT:

Q. As I understand the situation the Bethlehem Shipbuilding Corporation or its preceding plant companies had entered upon a certain construction program at their plants prior to the United States entering into the war; is that so?

A. Yes.

Q. And they were taking such contracts as they could take during that period, all during 1916 and 1917?

A. Yes.

Q. And, in connection with their program of construction they expanded, as I understand it, to figures referred to in your amortization item for 1917 and 1918 in connection with that general program; is that not so?

A. Yes.

Q. And that those were the parts that were used in connection with the Navy work and the requisitioned ships?

A. Yes.

Q. When the United States or the Fleet Corporation started its additional tonnage program, if I can so designate it, Bethlehem took the position that that would require additional plant facilities; is that so?

A. Yes.

Q. And Bethlehem designated what would be necessary to carry out that additional plant facility?

A. Yes.

Q. And the approximate cost of it?

A. Yes.

Q. And insisted that the United States should pay the cost of these additional facilities?

A. That is right.

Q. And the United States did pay it except for the $672,000.?

A. That is right.

Q. And with the additional work in plant which Bethlehem put in to build these contract ships, is the four million odd dollars and the $672,000.00; is that not so?

A. That is true, to be tied definitely with the contract ships.

BY THE MASTER:

Q. Then what other ship?

A. There was no other ship but he is trying to distinguish.

BY MR. HALLETT:

Q. You mean there were no requisitioned ships?

A. Yes, there were. I mean there were no other ships for which the plant was specially built. The plant was built for use of all ships. Such plant as we had, such plant as the Fleet Corporations put in, such additions as we made on our own account, were used indistriminately for all ships. The facilities installed by the Fleet Corporation were used by requisitioned ships. For instance, they consisted of pipe lines, underground wire and so on, and they were intermingled and you could not separate them.

Q. We understand that, and that is the problem, but I am afraid I am still in doubt now as to whether you understood Mr. Hallett or whether you understood me, because as Mr. Hallett put the question to

you and as your answer is now on the record, it would appear that the Fleet Corporation's contribution to Bethlehem of $4,825,000., plus Bethlehem's expenditure of $672,000, was all that was needed to furnish full and complete facilities for the building of the Emergency Fleet Corporation ships whereas, as I understood it originally in your testimony, in addition to the facilities that that investment represented, there was a proportion of your other facilities, estimated by you to have a capital value of $3,500,000., also used at the same time for the building of the Fleet ships?

A. I am extremely sorry if I gave you any different impression. Your statement is entirely true that, in addition to the facilities provided by the Fleet Corporation we used all such additional facilities as we had. We certainly did not build the ships entirely from the facilities supplied by this $4,800,000.

Q. So that in the discussion with the Fleet Corporation, as we now understand it, and as I thought I understood it originally, what Mr. Hallett really produces is this, that plus what you already had, it was necessary for you to expend approximately $5,000,000. more, in round figures, or $4,750,000. more in order to meet their program?

A. That is right. It was necessary that the Fleet spend that much more and despite the fact that we said we would not spend a penny on plant facilities we actually did spend $1,600,000. in 1918 and these facilities were likewise used in the building of the Fleet Corporation's contract ships.

THE MASTER: If you want to examine further on that all right but, as I understand, the fact as it now appears on the record is that the Bethlehem devoted to the building of the

ships of the Emergency Fleet Corporation, in accordance with the estimate made of the capital expenditures to be so allocated by this witness, a total of $10,767,916.

THE WITNESS: May I clear it up.

THE MASTER: Yes, if you can.

THE WITNESS: We did use facilities the total value to the Fleet Corporation of which was $10,767,916. but, in addition to such facilities in the building of the contract ships for the Fleet Corporation we used our plant which was there prior to 1917.

Q. I understand that, but this is the amount which was, for the purpose of your calculation here, the amount of your total capital investments that were subject to the amortization to the extent of 65 per cent.?

A. Yes.

BY MR. HALLETT:

Q. You don't want to create the impression that the amount of expenditures of $4,000,000. in 1917 and $1,592,000. in 1918 were expended by Bethlehem in contemplation or for the particular performance of the work on the contract ships, do you?

A. No indeed I do not.

Q. Bethlehem had a certain plant in 1916?

A. Yes.

Q. And Bethlehem had already its own plans for the enlargement of that plant?

A. Yes.

Q. And in the carrying out of those plans it expended items in 1917 and 1918 that you state you had; isn't that a fact?

A. Yes.

Q. Bethlehem did use those and its whole plant in constructing these particular ships?

A. Yes, of course.

Q. But the amount, however, which it had to expend in order to take these contracts and to carry them out, in addition to its previously planned plan was the $4,000,000 and the $672,000?

A. Yes, sir.

BY THE MASTER:

Q. So that we may be sure that we are both talking about the same thing, I am going back to the original question, which is this: that if Bethlehem had not already expended a total of $3,508,895.00 in its plant, in addition to the $4,825,000, it would have been necessary for the Fleet Corporation to spend that much in addition or Bethlehem to spend that much in addition to reach the total of plant facilities needed for these contracts?

A. That is right.

Q. And because that part of your capital investment for the war program was exclusively used for the Fleet Corporation's building and not available for other contracts, you have adopted that part of it as a part of your amortization total?

A. Yes, sir.

Q. As I remember Mr. Powell's testimony yesterday he said that in his estimate of the base cost he was figuring on an item of direct labor as the chief source for the saving, if any, which would be made in the performance under these contracts but that, since the contracts had been performed and the actual cost ascertained, he had not endeavored to determine whether the saving was in that item of direct labor or not, and I ask you, whether you are able to tell us, for the purposes of this

case, whether the saving, if any, was in the direct labor or in other items?

A. I am afraid that no one can tell. At the time the estimate was made, I will say November 1917, certain accounting was adopted by Fore River and the record on its books on the cost of a vessel was direct labor, direct material and expense. At that time Fore River undoubtedly was following a plan of operation in its plant. It might or it might not run through what we chose to call manufacturing orders upon which it would make a stock of, we will say, life boats. If we built these life boats and charged them directly to the ship the charge was lodged against the ship as material, labor and expense. If, on the other hand, we built these life boats in groups, for a group of ships, and carried them in inventory, when the lifeboats were charged to that ship they would be charged as material only. Now, subsequent to November, 1917, Bethlehem adopted a quite different manufacturing procedure than it theretofore followed, because some of its plants were peculiarly adapted to do certain kinds of work and it did the work for all of the plants. For instance our Moore plant built marine auxiliaries and carried them in inventory. Previously we might either have bought such auxiliaries from outside and charged them to 253, say, as material, or we might have built them at Fore River and charged it to material, labor and expense, but, as we subsequently did, we might have our Moore plant build marine auxiliaries for all of the yards and charge them as material. But I am sorry the records today would not permit of a determination where the savings were made.

Q. Then, as I understand it, although the tabulation which you have made or will make for the

purposes of the record as I have indicated to counsel I think should be made, will show the amount of savings, if any, on each of the contracts, you cannot break that down to indicate where the saving came from?

A. I am sorry we cannot. We can do it only in total.

Q. And that is largely due to the differences in accounting and the methods of distinguishing between direct labor and materials generally along the lines as you have indicated?

A. That is right.

MR. WOOD: I understand that it has been agreed that all stipulations by counsel as contained in the record of the previous proceedings will be maintained, and obviously they ought to be directed to the Master's attention and offered of record here. So that I desire to have it appear on this record, as it did on the previous record at page 759:

"It is stipulated that Bethlehem's claim, after presentation to the Emergency Fleet Corporation, was disallowed by the Shipping Board on its behalf and on behalf of the Fleet Corporation, and notice of that fact was given to Bethlehem before the bringing of this suit."

I understand that stipulation applies here?

MR. HALLETT: Yes.

MR. EVANS: I desire at this time to offer in evidence the memorandum which appears at page 494 of the Documentary Evidence, as Exhibit B-6.

An extract from the proceedings of the Board of Trustees of the Shipping Board, which appears at 579, as Exhibit B-7.

A letter at page 329 of the Documentary Evidence, as B-13.

Telegram dated March 19, 1918, at page 343, as Exhibit B-14.

The letter at page 196, as B-15.

A letter at page 198 as B-16.

A letter at page 443 as B-17.

A letter at page 464 as B-18.

A letter at page 468 as B-19.

Letter at page 473 as B-20.

The letter beginning on page 504 as B-23.

Page 507 as B-24.

Page 509 as B-25.

Page 510 as B-26.

Page 511 as B-27.

Page 231 as B-36.

Page 271, the telegram on that page as B-37.

Bethlehem Rests

THE MASTER: At the request of the Master counsel for the Government states that it may be conceded as a fact that the contract with the American Shipbuilding Corporation was the only then outstanding contract that was completely revised and a new contract made as a result of the letter from Mr. Charles M. Schwab to Mr. Hurley.

(Recess from 1 o'clock to 2:15 o'clock p. m.)

EVIDENCE ON BEHALF OF GOVERNMENT
(Continued)

GEORGE STANLEY RADFORD, having been duly sworn, was examined and testified as follows:

BY MR. BROWN:

Q. Where do you reside?

A. New Canaan, Connecticut.

Q. You are a graduate of Annapolis?

A. Yes, sir.

Q. Will you tell us briefly your shipbuilding experience subsequent to the time that you left Annapolis until you joined the Fleet Corporation?

A. I graduated from the Naval Academy in 1903 and then took a post graduate course in the Massachusetts Institute of Technology. After that I served in various capacities in the construction corps of the Navy and until 1915 when I resigned. The last four and a half years of that duty were on the staff of the Chief Constructor in Washington, in charge of contract legal and controversial matters.

Q. Subsequent to that time you joined the Fleet Corporation, did you not?

A. Not immediately. After I resigned I was engaged in munition work for the first two and a half years of the war and I was called to the Emergency Fleet Corporation by Admiral Capps and Admiral Bowles in the Summer of 1917.

Q. That would be about August, 1917?

A. About that time.

Q. How long were you with the Fleet Corporation?

A. I was with them until the following March.

Q. Do you remember the exact date when you left the service of the Fleet Corporation?

A. March 1st.

Q. And in what capacity or capacities did you serve with the Fleet Corporation while you were there?

A. For practically the entire time, excepting for the first two weeks or so when I was getting acquainted with the work, I was manager of the Contract Division.

Q. What were the functions of the Contract Division during the months of November and December, 1917?

A. I had no written instructions. I think, to make that clear, I should say that I was not a contracting officer. I had not the power to make contracts. I did act as an intermediary between the bidders for ship construction and for new ship yards and such matters on the one hand and the Fleet Corporation on the other, and having brought about, as nearly as possible, a meeting of the minds, I would then reduce that usually to writing and make a recommendation which usually led to a contract, or if I definitely recommended against it stop further proceedings.

Q. Did your duties relate primarily to ship construction or also to shipyards?

A. New yards, in connection with ships and some other matters.

Q. There were a great many new yards being organized during that period?

A. Several.

Q. And which had during 1916 and 1917 organized?

A. 1917 and 1918.

Q. There were many new yards?

A. The latter part of 1917.

Q. And, as I understand it, it was the function of your department primarily to see that the ship construction was expedited, was it not? Can we put it generally that way?

A. Well I would say that time was of the essence of the whole undertaking.

Q. And when I say expedited I mean it was the function of your department to see that ship construction was started; is that what you have in mind?

A. Well, I considered that the most important job I had really was to bring about as soon as possible the starting of all possible ships.

Q. In other words, ships were very urgently required during that period?

A. I believe that is a matter of common knowledge.

Q. In a general way, will you describe to the Master the conditions that prevailed in the contract department, with a special reference to the month of December, 1917, with respect to the amount of work which you had on hand, and how your days were occupied?

A. It is a rather difficult thing to describe that situation as it occurred unless you saw it. I think, in a few words, in general terms, the best thing to say about it is that we were trying to do in just a few months or weeks what ordinarily would have been done over a period of many years. There was no organization to speak of. When I was put in charge of the Contract Department, there was no organization to speak of, and I do not want to make that any reflection on my predecessors in office, because they had done a very good job, and the best

they could. As a matter of fact, we had an office about half the size of this, two or three stenographers, and when I went down there I had no further assistants, no technical assistants. Afterwards I had two or three men, only one of whom had had any shipyard or shipbuilding experience and we were just deluged by applications, both in writing and orally, so that I found myself in a position requiring that I have no appointments for two days a week. I was not always able to live up to that, and I am merely going into this detail to give you an idea what the situation was. I had appointments arranged by telegram and telephone which lasted from 15 minutes to all day long.

Q. And those appointments would be with persons in connection with the proposed construction of ships?

A. Mainly. People who either were shipbuilders, wanted to be shipbuilders, or who were coming in offering their services as possible shipbuilders and various negotiations that arose leading up to the contracts.

Q. And it was your function to interview these persons, as I understand it, with a view to determining what the Fleet should undertake in the way of ship construction; is that correct?

A. Yes.

Q. And working out the matters in controversy?

A. The first was a rough selection between propositions that looked as though they would result in ships and those that we could obviously see we were not going to get anywhere on, and those that we had to turn down we did as diplomatically as possible and that took time, and the rest were negotiations leading up to the making of ship contracts.

Q. At any rate, as I understand it, at that time it is a fair statement to say that your days were split up into intervals of short duration with a great number of different persons; is that correct?

A. Yes.

Q. What were the activities of Admiral Bowles' department at that time, the department of construction, in a general way?

A. Well, Admiral Bowles was manager of the division of steel ship construction, a department which had to do with the approval of plans for ships and estimates and all other matters in connection with the negotiation of the contracts. In other words, after a contract had been brought about and passed on by the Legal Department it was turned over to Admiral Bowles for execution insofar as the Fleet Corporation was concerned.

Q. And was the Admiral at that time, do you remember, also engaged in other activities such as Hog Island, possibly, and other projects of that sort?

A. Well the Fleet Corporation had two or three agency contracts. The operation, from the Fleet Corporation side, of course, was handled on the ground by Fleet representatives, but, in general, Admiral Bowles was in charge.

Q. When you refer to agency contracts, just what is exactly meant by that?

A. I mean in that case the Government employed, under various conditions, an organization to act as its agent in directing shipyards and building ships. They were on such a large basis that private shipbuilders would not be ordinarily interested.

Q. And included, among other things, the construction of yards in which the ships were to be built?

A. Quite right.

Q. And the Admiral, as I understand it, was also supervising that work?

A. In general.

Q. In other words, is it a fair statement that the Admiral, as well as yourself, were very much occupied with the various activities of the Fleet Corporation at that time?

A. In all respective departments.

Q. And, with respect to your particular department, were you going through the throes of organization also at that time, as I understand it?

A. Yes, sir. For some reason or other it was quite difficult to get people to come in to that work.

Q. You mean to assist you in connection with it?

A. Yes.

Q. You knew, did you not, that Mr. Piez had had no previous shipbuilding experience? That is already in the record, but I mean you knew about it at that time, did you not?

A. I knew he had had no close contacts with it.

Q. You knew that he had been connected with the Link Belt Company?

A. I knew he was president of the Link Belt Company.

Q. And what would you say with respect to Mr. Piez's activities at that time? Was he very busy himself?

A. Let me generalize and say that I don't believe I have ever seen any group of men more busy than the Fleet Corporation organization.

Q. And it would be a fair statement to make, would it not, that Mr. Piez necessarily relied on his subordinates with respect to such detailed or technical matters as construction cost with respect to ships?

A. Oh, I am sure that he would do so.

Q. Well he would necessarily do so, would he not?

A. Yes, sir.

Q. And with respect to those Bethlehem contracts which are in controversy, as I understand it, you and Admiral Bowles really had charge of the negotiation of those contracts on behalf of the Fleet Corporation at that time, did you not?

A. Yes.

Q. Will you describe in a general way the usual course of dealing at that time with respect to negotiations of contracts between the Fleet Corporation and shipbuilders?

A. Well, the full procedure began with the submission of a proposal to build ships and that document usually came directly or indirectly to my department, and it should, of course, in all cases, and was then subject to sufficient analysis to break it down. In other words, if there was no shipyard to take the complete case the Department of Docks had to make an investigation as to the site proposed; the Financial Department had to make an investigation as to the capacity of the ship contractor to carry out the obligations to be incurred; if there was any difficulty connected with the type of ship, Admiral Bowles's department of steel ship construction would pass on the availability of the plan, and then having reports from all these departments it was up to me to bring them into line as far as possible with the Fleet Corporation's policy. Now where we knew there was a shipyard existing where the people were known to know their business a part of those details were very obviously wiped out.

Q. Was it customary at that time to make any

analytical study of prices submitted by the shipbuilders, either with respect to lump-sum contracts or otherwise?

A. I made none.

Q. What would you say about the usual course of business that prevailed?

A. Well the usual course of business was based on the going prices at the time for that particular type of ship involved. For example, I knew that cargo carriers, the prices ranged from $160 to $180 a ton during that period depending upon the type of vessel and it was simply a question of negotiating on the market. I had absolutely no facilities nor staff and no time to carry out detailed cost investigations and I don't know that I considered it necessary in any case.

Q. And to put it another way, can you remember any instances during your employment by the Fleet Corporation in which you made any analytical study of costs submitted, after the shipbuilder had submitted it?

A. I did not.

Q. And you cannot remember one instance in which that was done?

A. If you remember that I am reaching back a long time in my memory, but it is my belief that nothing of the sort was done. I know I didn't do it, if that is the point you want to bring out.

Q. You can say, can you not, if such a thing was done it would be an exceptional instance?

A. Oh, yes, and if it had been done in any important case I think it would have been brought to my attention.

Q. And, as I understand it therefore, you made no such analysis with respect to the estimates sub-

mitted by Bethlehem with respect to these ships in controversy?

A. I did not.

Q. Do you know of any analysis that was made by any other member of the Fleet Corporation?

A. I do not.

Q. Do you remember their ever having made that with respect to a consideration of the prices submitted by Bethlehem, you personally?

A. I remember that I considered them in the course of business and in discussing with both the shipbuilders and with Admiral Bowles, representing the Fleet, but, if you are asking in a different form the same question, which I take it you are, I didn't make any analysis of them.

Q. You made no analysis whatsoever?

A. No.

Q. And, as I understand it, you were not in a position to make any such analysis at that time; is that correct?

A. That is correct.

Q. And was there any data available, insofar as you know, to the Fleet Corporation, which would have enabled you to make a careful detailed analysis of such costs, or was it possible to make such analysis at that time if such data had been available?

A. You are asking a number of questions there all together. I had access to no such data and had no data of my own.

Q. Do you know of any such data available?

A. I did not.

Q. Insofar as you know, there was no such data?

A. No.

Q. If by any possibility a check had been made, a careful analytical check of Bethlehem's figures,

for some special reason or otherwise, in the ordinary course of routine business, would it not have been also likely that a report with respect to that check would have been submitted to you as instead of the contract division?

A. I don't very well see how I could have helped knowing about it. I think they would have shown it to me.

Q. And no such report ever was made?

A. I saw no such report.

Q. And you never knew of any such report?

A. No.

Q. What was your primary concern with respect to the construction of the ships? I am referring to what you were particularly interested in in connection with these ships?

A. Well you probably know, and it is common knowledge, I think, that at that time pressure for ships was savage. The submarine sinkings were greatly in excess of any previous ship production in our country. We were very much concerned in getting certain types of ships which were quite difficult to build, and I cannot say that I blame the ship contractor at all for not wanting to build them, but we were anxious to get that particular type of ship which was one of the first things that was of interest, and the second thing was to get them just as soon as we could, and if I can carry on sufficiently there to clarify the point a bit, I regarded the contract as an authority to proceed at once with the construction of the ships, details to be ironed out later, and time was the great thing in every move we made and had to be.

Q. Right on that subject of the tankers, what was Bethlehem's attitude with respect to the construc-

tion of tankers? I think you have already implied it in your answer.

A. I have in my previous testimony at any rate stated that they were reluctant to engage in that more difficult construction.

Q. What kind of ships did they want to build?

A. Well, such capacity as was available I presume. What they said was cargo vessels as far as we were concerned, as far as possible.

Q. What would you say with respect to the construction of troop ships, as to the comparative difficulty of such construction as compared with the other type of ship and the length of time that it would take to build them?

A. There was greater difficulty involved in this case because there were a number of unknown factors, as I recall it, to be ironed out in connection with construction.

Q. It was a considerably more complicated type of ship, was it not?

A. Presumably.

Q. And would presumably take a great deal longer to build, would it not?

A. I believe so, in that case.

Cross Examination

BY MR. EVANS:

Q. The reason Bethlehem gave for preferring to build cargo ships rather than tankers was that they were afraid that disorganizations might result in their yards from undertaking that more difficult type of work such as was represented by tankers?

A. Yes.

Q. And by the disorganization you mean exactly what?

A. Well I don't know what they meant but I presume what they meant was the general fear expressed by experienced shipbuilders at the time, mainly in the riveting. The riveting of tankers is more difficult, with a great deal of work going on, to get up a force of 100 per cent thoroughly skilled riveters, was a very difficult situation.

Q. In other words the question of getting adequate skilled labor in shipyards was a very live question at that time?

A. In any war plant.

Q. And that applies, of course, to shipyards?

A. Everything.

Q. And what Bethlehem was afraid of was if the Fleet Corporation loaded them up with tankers and troop ships, which are ships that do require skilled labor, that they were not going to be able to get enough skilled labor to carry out the program and that would disorganize their yards?

A. My recollection is that they told us that they expected considerable difficulty in building up a staff to carry out that program.

Q. That is the reason they said they would rather have cargoes?

A. I presume so.

Q. In your testimony before Mr. Roberts in this proceeding you said that you fully realized at the time that conditions were going to change beyond anybody's wildest imagination. Do you recall making that statement?

A. Yes.

Q. You do recall making that statement?

A. Yes, I recall stating to that effect.

Q. And that is a fact, isn't it?

A. Yes.

May I elaborate a bit and say that I had been through at that time several years of war contract work and I knew that it was impossible to plan ahead and tell what was going to eventually happen.

Q. And that being the situation in which you and other people were working it was impossible for anyone to approximate with any reasonable degree of accuracy what it would cost to construct a large number of ships the construction of which were to extend over the period of the war? Isn't that a fair statement?

A. Why, I don't think it would be possible to make an exact computation, or a very exact, if you want to put it that way. It would be in general terms.

Q. You would have to make liberal allowances one way or the other, according as you were an optimist or a pessimist, wouldn't you?

MR. BROWN: I think in fairness to the witness there is something else that might be there, and that is the basis of the calculation.

BY MR. EVANS:

Q. Will you answer that question? (Question repeated).

A. Yes.

Q. In other words, when Mr. Powell stated, as he did, in his letter of December 19th, as he had previously stated in his letter of December 13th, that it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, you realized that that was a perfectly reasonable statement to make at the time?

A. Well I thought it was a fair statement.

Q. You were asked in these proceedings before Mr. Roberts, by Government counsel:

"Q. And it is almost unnecessary I think to ask whether you had complete confidence in the integrity of Mr. Powell at that time?" and your answer was, "Absolutely, I still have." Do you recall that statement?

A. I remember and it is not quoted exactly as I said it. I remember. It is one of those little things that come up that you do remember. I remember not only that, and I still have.

Q. You still have.

A. And I still have.

Q. And that still applies today as well as it did on the date you were testifying before Mr. Roberts?

A. Yes, sir.

Q. Do you have any clear recollection of what transpired at the conference on January 3, 1918?

A. Well now, you will have to define what you mean by clear. I know there was a conference. I looked at records enough to see that and several people said I was there and I remember I was there with several people. I remember there was quite a disagreement on certain points and afterwards I wrote a memorandum to try to bring about action on the thing.

Q. What I really wanted to ask your attention to was this; do you recall that as a result of that conference the prices which were finally agreed upon for these ships were substantially less than the prices which Mr. Powell had submitted in his proposal of December 19th?

A. I remember that there was a modification downward of some of the estimated prices which

were to form the profit sharing policy of the contract, but as to the amount of reduction, or whether they were substantial or not I don't remember. I must say again my interest in the conference was mainly on the subject of getting some ships underway and how soon they would be built and what assurance we would be given in the way of definite delivery dates so we might plan our program, and that is the phase that I remember with the greatest distinctness.

Q. Yes, and I think you told us so the last time, and I think you also told us that such bargaining as was done on the matter of price was done by Admiral Bowles and not by yourself?

A. It represented his opinion more than it did mine. I realized that there would be adjustment of one sort or the other afterwards of necessity.

Q. But you do recall that the result of that meeting was that there was some reduction in the price originally submitted?

A. Oh yes.

Q. Is your recollection of the meeting clear enough to tell us by what process the reduction was arrived at?

A. No, I am sorry I cannot recall the details of that phase of it.

Q. Do you recall that Admiral Bowles objected to the prices which had originally been submitted by Mr. Powell?

A. I thought I had said so before.

Q. Then you do recall it?

A. I recall that Admiral Bowles considered the prices high.

Q. And so stated to Mr. Powell?

A. Well I presume he must have but I cannot

recall having heard Admiral Bowles say that particular thing to Mr. Powell nor that H. G. Smith was in the room and I am not sure that Mr. Brown was there and other people from time to time. That might easily have occurred but I don't recall all the details of the discussion.

Q. You made some reference to Mr. H. G. Smith. Is it your recollection that he was at that meeting?

A. I don't remember that he was at the time. I say he might have been.

Q. Nobody else had said he was at the meeting and that is why I asked you?

A. I am merely saying that to indicate that I cannot recall details of that sort.

Q. At any rate you do recall that Admiral Bowles expressed it as his opinion that the prices which Mr. Powell had submitted were too high?

A. Yes.

Q. And as a result of that there was some process of bargaining, wasn't there, by which the prices were ultimately reduced?

A. I remember there were reductions in the estimated price.

Q. And after the prices had been reduced essentially the bargain was closed on the basis of the prices so reduced?

A. Well, the contract was entered into.

Q. Well it was not actually entered into but I mean it was closed so far as the verbal negotiations were concerned and that was followed by a recommendation signed by you and Admiral Bowles?

A. I see what you mean. As far as I was concerned the thing was settled. It went out of our department to the Legal Division where the contract was drawn.

Q. So far as you and Admiral Bowles were concerned you were satisfied with the agreement which had been arrived at at that meeting?

A. No. We were satisfied we had gotten the best agreement that we could and that we were in a position to make a representation to General Management of the Fleet Corporation that would lead to a contract. I would just as soon modify what I said about not being satisfied. I was not satisfied because I had no definite information about when we were going to get these ships and I had to have it in order to make up any sort of a schedule to have any real program.

Q. You were not satisfied on the delivery dates?

A. I was not satisfied on the point of definiteness, if you want to put it that way.

Q. The definiteness of the delivery dates?

A. Yes.

Q. But, as a result of the negotiations which took place between Admiral Bowles and Mr. Powell at that conference, your understanding was that the base prices had been definitely agreed upon?

A. Yes.

Q. So far as you and Admiral Bowles were concerned?

A. Well we were in a position where we said to the management we want to go through with this thing and we won't go any further with it and we are not warranted in doing so in view of the national emergency.

Q. And those prices which were agreed upon at that meeting were the result of barter and trade?

A. I think that is a fair statement. I don't know what other basis they could be put on.

BY THE MASTER:

Q. In a memorandum of January 5, 1918, which was two days after this conference at which you reached a figure which was the best to be obtained from Bethlehem, you joined in a recommendation to the management of the Fleet Corporation, as I understand it, that the terms that were outlined at the January 3rd conference be accepted and that Mr. Piez sign the letter that accompanied your memorandum?

A. That was the paper I referred to just a few moments ago. In order to bring about action on this thing I dictated that memorandum and put it before Admiral Bowles and he said I believe you are entirely right and signed it. I am reaching back quite a ways but that is my recollection, and I endeavored in that to state his feeling as well as my own.

Q. In the memorandum you stated that while the prices we have agreed to with representatives of Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless they represent a material reduction in the prices quoted by that corporation. I gather from what you said a few minutes earlier that it was Admiral Bowles who was more dissatisfied with the prices than you?

A. He was principally interested in the matter of cost and I think there is a natural explanation for it and the different attitude that we would have individually on the situation. Now my feeling, as I explained somewhat briefly a little while ago to Mr. Brown was just this, that I was there to act as an intermediary to bring the shipbuilders sufficiently close to the Fleet Corporation management to start some ships building and the sooner the quicker. I

might say, too, just to make that clear, that I had been in this war work since the very beginning. I was in the rifle business for two and a half years, and I knew about this three shift operation on war schedules and I knew how desperately important any time element was, and I also knew that we could not foresee all these things, and I felt this way, that if the Government did intend to offset the whole structure of the contractors they, as a party to the contract, would be in duty bound to compensate them for it. So there was that protection in the estimate. If, on the other hand, we made a contract through some accident or other that sent prices crazy, that legislation was already in the offing in the form of war profit taxes and what not, to take care of extreme cases of that sort; I hope that answers your question. If not I will be glad to elaborate on it.

Q. It answers it perfectly along that line. Further than that, however, I should like to ask you whether between the meeting of January 3rd and January 5th, when Admiral Bowles was presented by you with this memorandum, he had discussed with you the prices that he had objected to and which he still objected to?

A. I recollect no discussion with Admiral Bowles on the manner of prices except his bald statement that he considered the prices too high.

Q. Did he at any time tell you, either before the meeting of January 3rd, after he received the proposal of December 19, 1917, to the time when this memorandum was signed by him for Mr. Piez, what he thought the proper price should be?

A. No, not that I recall.

Q. Do you recall any discussions with Admiral Bowles during the early part of January after you

were committed to this contract that indicated what he thought was the excess between the fair price, as he would fix it, and the price that had been agreed upon?

A. No, sir, I recall nothing of that sort. Admiral Bowles, if you knew him at all, was a man of rather few words. He made up his mind, usually quite correctly, and expressed himself quite clearly and briefly and he considered further discussions superfluous in most cases. We had a great many things to do and we did not go into the thing in very great detail.

Q. On the other hand, you and Admiral Bowles had the responsibility between you, for the Fleet Corporation, of recommending a price for the ships that were being contracted for, didn't you?

A. Yes, we had to recommend in specific instances. As a matter of fact only in certain instances did Admiral Bowles enter into it. I had the duty myself in ordinary cases. Of course this Bethlehem tonnage was very large and I was only too happy to have his judgment injected, but in ordinary cases the responsibility was mine to make recommendation as to prices and other conditions.

Q. You spoke a little while ago of relying, so far as your own judgment was concerned, upon what you called the going price of such vessels, as a base at least, for your conclusions?

A. Yes, the market at the time.

Q. Now, did you attempt to ascertain what the market at the time was for the ships that were covered by the Bethlehem contract?

A. At that time I knew, and, of course, had to know, in general terms, what ships of a similar character, insofar as we had had any market de-

veloped, were contracted for, making allowances for the fact that some of them were on lump sum contracts with very definite dates of delivery, which was a consideration we had been quite glad to pay additional sum for short delivery, prompt delivery, of course.

Q. With that knowledge, did you for yourself at least, regardless of what Admiral Bowles may have thought, determine what was a fair average on the market price for these boats as contrasted with the price suggested and finally agreed upon with Bethlehem?

A. I may in my mind, of course, must have made a comparison between the Bethlehem offerings and contracts of others for similar vessels, or offers for similar vessels. Is that the answer you want?

Q. If you will also follow that with a statement as to what in percentages you believed the differential was?

A. I don't recall those figures today but I do remember this much about it, that I was not so much concerned by any manner of means as Admiral Bowles was on that question of cost.

Q. Was that because that you felt that the differential between the figure which you regarded as a fair going market price and the figure which was finally agreed upon with Bethlehem was not so substantial that it made any real difference?

A. That may have entered into it, but I don't think it was that, however, so much as my feeling that there were many other things more important, such as, for example, getting that transaction off the books, work started and ships under construction.

Q. Did the fact that Bethlehem was agreeing to

undertake to build the kind of ship it was difficult to get anybody else to build enter into that situation?

A. By all means. These ships were very much more interesting to us than a like number of cargo vessels. We eventually did get other shipbuilders to build the same ships, you know.

Q. Did you at that time have in mind the fact that it was in a letter from Mr. Powell dated December 13th, 1917, that the type of contract that was being suggested as the base included as the basis of this estimated cost a reasonable liability of earning, after the payment of Federal and excess profits taxes sufficient to net Bethlehem 10 per cent.?

A. I don't recollect just at the moment. Perhaps I would if I looked at the letter.

Q. Well it is only the fact that that was an element in the figures?

A. Well I don't think I am quite clear on that question. I would like very much to answer it if I can.

Q. The letter I have reference to is Government Exhibit 104 and I think it is rather important for us to get cleared up what was in the minds of you and Admiral Bowles if we can. Just look at that letter. It will help get to you what my question is directed to.

A. Well, I knew that he made the statement, of course, in that letter.

Q. Did Admiral Bowles discuss with you at all in preparing for this meeting of January 3rd the form of contract that carried with it a 50 per cent. saving clause?

A. No, but that goes back quite a little into Fleet Corporation history. I don't want to burden you with too much detail but I want to make it clear.

There were a number of contracts of various forms, namely the cost plus basis had been entered into by Admiral Capp's program when he became manager of the Fleet Corporation and brought in with him, of course, Admiral Lowles. Admiral Capps was very much opposed to anything in the form of cost plus contract, and not only cancelled everything in the way of negotiations on at the moment, but on the theory that it was going to result in great dis-organization of the shipyards, and it did in the Fleet's well organized yards, he wanted to get everything on a lump-sum basis and as definite as possible. Where we had to make exceptions for one reason or the other the endeavor was made to get away from the unlimited cost plus basis and we did the next best thing where we could; we made it cost plus a fixed fee which took out some of the sting, that is of the danger of dis-organization. I am not referring to anything that might be sinister in its implication at all but I simply mean it is an exceedingly difficult thing in war time to keep the shipyards for other organizations lined up when they know it is on the cost plus basis. So we might make if a cost plus a fixed fee in one instance and then when we had to go one step further to a certain extent we made it a profit sharing feature. I was working in my own mind with a method of exceptions. We started out with a form of contract and a policy that would be satisfactory for every case and then on specific cases made such exceptions as the circumstances indicated.

Q. The form of contract that was adopted with Bethlehem was therefore what you would regard as a development from the other types of contract as the Fleet policy?

A. It was a compromise really and a very good form of contract; cost plus a fixed fee and profit sharing contract in theory at least is reasonable.

Q. And in dealing with other shipbuilders after that form of contract had been adopted, was it used with anybody else than Bethlehem?

A. I will revert again to what we were just discussing. If anybody came in there the first attempt was to get them on a lump-sum basis and then to back up step by step towards that form of contract if we were forced to do so. You see the important thing was to get everything as definite as possible.

Q. Now, of course, on the other hand, so that I may get the policy of the Fleet in my mind, it was not the intention of Admiral Bowles or yourself, in negotiating these contracts with any of the shipbuilders, to do so on a basis that would deprive them of a reasonable, fair profit, and destroy the incentive to do proper work?

A. Oh, quite the contrary. I think the attitude throughout was not to put it on a trading basis but to realize that all the incentive possible should be given.

Q. I gather from what you told us concerning the lack of any detail discussion, that Admiral Bowles did not discuss with you fully, during the conference of January 3rd, just what his estimated saving was, did he?

A. No, not that I remember. It may have occurred.

Q. Do you recall whether at any time either you or Admiral Bowles did discuss with a representative of Bethlehem what was the estimated amount of the saving on the base price?

A. No, sir, I am quite sure I did not. I don't

think it would have occurred to me at the time, in view of the other circumstances.

Q. One other question and that is whether or not you knew at the time of the agreement reached on January 3rd of a letter of that date which Mr. Powell had delivered to Mr. Charles Piez whereby he indicated his willingness to leave the matter of price in the contract to Mr. Piez in the event that Admiral Bowles and he were unable to reach an agreement?

A. I remember the letter because I was shown the original two or three years ago. I remember it quite clearly. I am very certain that I had not seen that letter until the date which I initialed on the bottom of it, and I am sorry that I don't recall that date, but I would not have written the memorandum which you referred to a short time ago if I had known of the existence of that letter. That is quite unreasonable to think that that would have happened and that probably clears the point for you. Now when I saw the original letter, of course it was one of dozens of letters on the different work at the time, and all I did was that I was quite careful to initial and put the date on any important paper that came before me, and when the original was handed to me two or three years ago I looked for that and found the date was some days afterwards and I think it was about the 11th.

Q. That was about how long after January 5, 1918, that you saw that letter, do you suppose?

A. I think the date I saw it was about the 11th. The original ought to be around here somewhere and you will find on it the stamp and the initials.

Q. Your best recollection, as I understand it, is that that letter came through to you in the ordinary course of routine business?

A. Considerably later.

Q. And probably about January 11, 1918, is your recollection?

A. Yes, sir.

Q. After you did see that letter did you take up with Admiral Bowles or with Mr. Charles Piez a suggestion that the price had been fixed that the base price for these contracts be revised before any start of the work was undertaken?

A. No, sir. I can answer that question in the negative for the reason that it would have been contrary to my own feeling what was a proper policy for the Fleet Corporation. The object of the Fleet Corporation was not to put the Government into shipbuilding as a big shipbuilder but it was to spread out the job and decentralize it as much as possible, and I would have personally objected on the theory of the thing to anything that would say, "Now you go do this way we say you are to do it."

Q. You would have preferred to have taken the chance on recommending something more than might be regarded as giving a reasonable profit in order to get the work going on a large scale by Bethlehem?

A. Well, and to leave us out of the picture as having ordered them how they were to do a thing and under what conditions. We wanted to give them the job of producing certain ships and the only influence that letter would have had on me would be to cut out the word "arbitrary" in that memorandum. That is one of the things that you dictate in the busy day and it comes back to bite you ten years afterwards.

Q. Just because it has been discussed here by several of the witnesses as, I suppose, an indication of the fact that the dealings were distinctly at

arm's length between Bethlehem, through Mr. Powell, and the Fleet Corporation, through Admiral Bowles, I am going to ask you whether or not there was any indication in what Admiral Bowles said to you or anything that he said in your presence to others, that showed an attitude personally toward Mr. Powell that was other than that of the fair, confidential relationship and friendly attitude?

A. Well, now, is it in order to indulge in rather a free statement?

Q. Yes, unless counsel objects to it, because I think that it has become a matter of some consideration.

A. I don't know if you know of my relations with these gentlemen or not. We were all pretty much in one family in the shipbuilding game before the war. Mr. Powell, Admiral Bowles and myself were in the same corps in the Navy, and, as a matter of fact, my first duty after I left Boston Tech was Assistant Superintendent Constructor at the Fore River works for the Bethlehem Company and Mr. Brown here and I had many a discussion and still remained friends. They are all friends of mine, if that is understood to begin with, and, as far as Admiral Bowles is concerned I worshipped the ground that he walked on and miss him tremendously today. Admiral Bowles—I dare not start saying anything about him for fear that I may say so many things that I would like about what a wonderful man he was—Admiral Bowles often gave the impression of feeling very strongly about something that did not really concern him at all. In other words, he was a man who was utterly without fear and without reticence, when it seemed important, to say what he felt was so. I might even go on and say I know of

no hard feelings, as far as he was concerned, or I would not be in a position to know about the other people, but so far as he was concerned I know of no bitterness in that situation.

Q. Toward Mr. Powell?

A. No, or anybody else in connection with it. Now the only man in the Bethlehem organization as it happened that I overheard Admiral Bowles say anything about was the man who was at the head of it and I heard him say that he liked him very much, while he frequently disagreed with him.

Q. That was Mr. Schwab?

A. Yes. I am afraid I cannot help you very much on this gossip. I know there were a number of people who one time and another said that Admiral Bowles and so and so were enemies. Well what I have tried at some length to say in vindication of a very dear friend, is that you had to know the man and know the situation in order to form a just judgment of what that thing meant. I don't think that his judgment would be biased, to boil it down and crystallize it, on anything. Admiral Bowles was working for one purpose in Washington and with everything he had in him, and that was for the United States.

Q. And, therefore, I assume from what you have said that in dealing with Mr. Powell, representing on the one hand the Bethlehem, and Admiral Bowles, representing the United States on the other, Admiral Bowles was endeavoring to make the best agreement that he could under the circumstances?

A. Yes, and in my opinion impersonally.

MR. HALLETT: I desire to offer some further Exhibits, I first offer Exhibit formally offered as G-189.

THE MASTER: These will be admitted and given the same exhibit numbers unless there is some objection.

MR. HALLETT: I also offer the following as physical exhibits, formally offered as G-190, G-191, G-192.

I offer from this book headed labor cost, direct labor cost, direct labor hours (plus bonus overtime), as Exhibit G-210, which may be taken out of the book and photostated and offered as such, this relating to the Union plant.

Oral Testimony Closed.

THE MASTER: It is agreed by counsel, and consented to by the Master, that counsel may have the privilege of examining the Exhibits and the record of the previous trial and in the event that it is necessary to accompany the Exhibits now in the trial before me by an explanation given at the previous trial, or required here; the explanation made be read into this record with the same force and effect as if made here and now.

It is also agreed to and consented to by the Master that if upon an examination of the record at this trial either counsel desire to offer,

as additional exhibits, before the Master, any of the Exhibits offered at the previous trial and not offered already in this record, they may have the privilege of doing so, and, upon notice to the Master, they will be incorporated in the record.

In order that counsel may have an opportunity of calling the attention of the Master to any inaccuracies in the transcript of the oral testimony, and to submit additional exhibits, if any, the Master will hear counsel at such day in the future as they may agree upon, after they have an opportunity to examine the record, upon such corrections as they may desire to have made and to receive such exhibits as they may desire to offer, if any. If there is any time limit that counsel desire to put down we will put it now or otherwise the Master will assume that counsel will do it as rapidly as possible in order that the record at least may be complete on which to start the basis for the consideration by the Master.

It is agreed that requests for findings of fact and conclusions of law, together with briefs, will be filed with the Master by both parties on or before May 15, 1931, unless the time is further extended.

Meeting held at the office of the Special Master and Referee, William Clarke Mason, Esq., 2107 Fidelity-Philadelphia Building, 123 South Broad Street, Philadelphia, on Monday, May 11, 1931, at 3:30 p. m. D. S. T.

Present:

William Clarke Mason, Esq., Special Master and Referee.

Joseph J. Brown, Esq., for the Government and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., for Bethlehem Companies.

It is stipulated between counsel for Bethlehem and counsel for Emergency Fleet Corporation and the Government that with respect to all of the contracts involved, a complete audit of the total cost of the vessels included in the respective contracts and of the revised estimated cost thereof, was made by the Emergency Fleet Corporation and the said audit was completed on or about the 1st day of September, 1922.

MR EVANS: I offer in evidence Paragraph 207 of the statement of claim in the case of Bethlehem Shipbuilding Corporation, Ltd., against the United States Shipping Board Emergency Fleet Corporation (No. 11970), reading as follows:

"Two Hundred Seventh: The plaintiff completed said six equipments and said six sets of spares in accordance with the terms and provisions of said contract and said plans and specifications and delivered the same complete to the defendant f. o. b. cars, as provided in Section 2 of Article I of said contract, on or before the first day of February, 1921. The plaintiff duly performed all the terms and con-

ditions of said contract on its part to be performed and the defendant took possession of and accepted said equipments and said spares as constructed in accordance with said plans and specifications and the terms and conditions of said contract."

In connection with that offer I offer the corresponding paragraph of the affidavit of defense, but only for the purpose of showing that the averments of the statement of claim are not denied:

"Two Hundred and Seventh. In answer to Paragraph Two Hundred and Seventh of the Statement of Claim, defendant avers that it took possession of and accepted said equipments and spares upon behalf of its said principal."

I also offer Paragraph 210 of the statement of claim in the same case, as follows:

"Two Hundred Tenth: After the termination of said agreement of lease, in the latter part of the year 1919, the defendant, in accordance with the terms thereof, removed said barracks and on or about the 29th day of March, 1920, entered into an agreement with the plaintiff whereby the plaintiff agreed to provide for the restoration of said land and the defendant agreed to reimburse the plaintiff for the cost thereof. In accordance with said agreement, and at the direction and with the approval of the defendant, the plaintiff procured the restoration of said land to its original condition at a total cost to the plaintiff of two thousand five hundred and seventy dollars ($2,570)."

Paragraph 210 is admitted without qualification in the affidavit of defense.

I offer also Paragraph 211 of the statement of claim in the same case, as follows:

"Two Hundred Eleventh: Upon the restoration of said land to its original condition as aforesaid, there became due from the defendant to the plaintiff the sum of two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the plaintiff from the defendant, with interest thereon from the first day of June, 1920."

I offer Paragraph 211 of the affidavit of defense, but only for the purpose of showing that the averments of the corresponding paragraph of the statement of claim are not denied;

"Two Hundred and Eleventh. In answer to Paragraph Two Hundred and Eleventh of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $2,570.00 against the balance owing by it to defendant upon the causes of action hereinafter set forth in defendant's Set-Off and Counterclaim. Defendant avers that the agreements referred to in plaintiff's Twentieth Cause of Action were made by defendant upon behalf of its principal, the United States of America."

THE MASTER: There being no objection, the offers are all admitted.

MR. BROWN: I offer in evidence as Exhibit G-176 the pamphlet showing the prices agreed

upon between the War Industries Board and the steel manufacturers, together with the comments in reference thereto appearing at pages 163 and 164 of the previous record, as follows:

"Mr. Brown: Now, if it is agreeable to counsel for Bethlehem, I would like to offer certain statements issued by the Committee on Public Information during 1917 and 1918 relating to the fixation of prices on certain iron and steel products under an agreement or agreements between the War Industries Board and certain steel manufacturers, including the Bethlehem Steel Corporation and its affiliated concerns.

Mr. Evans: There will be no objection to that."

I offer in evidence for this record so much of the testimony of the witness H. G. Smith as was offered before the former Master, appearing upon the record at pages 319 and 320 and relating to Exhibit G-168, as follows:

"Henry Gerrish Smith, having been duly sworn, was examined and testified as follows:

By Mr. Brown:

Q. Mr. Smith, what is your connection with the Bethlehem Shipbuilding Corporation?

A. I am a vice-president of the Bethlehem Shipbuilding Corporation.

Mr. Brown: I suppose there is no objection to my calling Mr. Smith for cross examination.

By Mr. Brown:

Q. Mr. Smith, will you tell us whether the document which I show you is a copy of the document which was signed by you upon behalf

of the Bethlehem Shipbuilding Corporation and by A. N. Lisson upon behalf of the Emergency Fleet Corporation, to the best of your recollection?

A. It is.

Mr. Brown: I would like to have that marked for identification.

Mr. Roberts: Marked G-168 for identification.

By Mr. Brown:

Q. Mr. Smith, will you tell me whether this document marked as Exhibit G-168 sets forth the accounting and cost procedure adopted and followed by Bethlehem Shipbuilding Corporation during the period of ship construction under the contracts in controversy?

A. It sets forth in a general way the method in vogue at the time.

Q. During the period covered by the work done for the Fleet Corporation?

A. Yes.

Q. By the Bethlehem Shipbuilding Corporation and its subsidiaries; is that correct?

A. Yes.

Q. And it likewise, as I understand it, in a general way sets forth the accounting methods which were in force among the Bethlehem subsidiaries and the Bethlehem Steel Corporation during the period of 1917 up until the organization of the Bethlehem Shipbuilding Corporation; is that correct?

A. Well, it sets forth—

Q. Do I make clear the question? Were the methods set forth in this exhibit substantially

similar to the methods in force among the Bethlehem Companies prior to the organization of the Bethlehem Shipbuilding Corporation?

A. Yes.

Mr. Brown: I offer that document in evidence.

Mr. Evans: No objection.

Mr. Roberts: It is admitted as G-168."

MR. BROWN: I would like to offer Exhibits G-199 to G-202 inclusive, which were offered at the last proceeding, which were, I think, the contracts with the other shipbuilders.

I would like to offer the admission in explanation of the American Shipbuilding contract which has been offered in evidence as Exhibit G-196 and which appears at pages 884 and 885 of the previous record, as follows:

"Mr. Brown: We offer one of the contracts between the American Shipbuilding Company and the Emergency Fleet Corporation, which is referred to in the revised contract between the American Shipbuilding Corporation and the Fleet Corporation, which has been offered in evidence as Exhibit B-8, and which it is conceded is similar in form to all of the original contracts between the American Shipbuilding Company and the Emergency Fleet Corporation, differing only with respect to the number of ships and the amount of the purchase price stated in each contract.

Mr. Hallett: And delivery dates.

Mr. Brown: And the delivery dates.

Mr. Roberts: Received as G-196."

If there is no objection, I would like to have it admitted of record that Exhibit G-6 was furnished to Government counsel by Bethlehem counsel during August, 1927.

It is stipulated between counsel for Bethlehem and counsel for the Emergency Fleet Corporation that Bethlehem Shipbuilding Corporation, Ltd., is a corporation organized and existing under the laws of the State of Delaware, and that the United States Shipping Board Emergency Fleet Corporation is a corporation organized pursuant to Section 11 of the Act of Congress approved September 7, 1916, known as the Shipping Act 1916; that it is a corporation existing under and by virtue of the laws of the District of Columbia.

Counsel and the Master, having gone over the record of the testimony, have submitted certain corrections, most of them typographical, which it is agreed are to be made in the several copies of the testimony to complete the record in proper form.

The Master notified counsel that an extension of time would be granted for the filing of briefs until June 1st, at which time counsel can exchange briefs and file them with the Master.

TESTIMONY BEFORE OWEN J. ROBERTS, ESQ., REFEREE

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315 March Sessions, 1925

In Equity

The United States of America,
Complainant,

v.

Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

No. 11970 December Sessions, 1925

At Law

Bethlehem Shipbuilding Corporation, Ltd.

v.

The United States Shipping Board Emergency Fleet Corporation

(Pages 606-610, inclusive, as per Stipulation of Contents of Record on Appeal)

Q. Mr. Powell, in a volume reporting Hearings before the Cominittee on Commerce, United States

Senate Sixty-fifth Congress, Second Session on Senate Resolution 170, directing the Committee on Commerce to investigate all matters connected with the building of merchant vessels under the direction of the United States Shipping Board Emergency Fleet Corporation and report its findings to the Senate, together with its recommendations thereon, it appears that you testified before that Committee on February 1st, 1918. Is that correct? Did you so testify?

A. Yes.

MR. BROWN: I will ask to have this volume marked for identification.

MR. ROBERTS: It is marked G-185 for identification.

BY MR. BROWN:

Q. It appears at pages 1395 and 1396 of this volume that you testified as follows with respect to the contracts of December 6th, 1917 which had been entered into between the Bethlehem Shipbuilding Corporation and the Navy: "Mr. Powell. We agree with the Navy Department that under the conditions under which these ships are to be built, we will take a type ship that would cost a million and a half dollars. The Navy Department says to you, 'We will pay you $135,000 for building that ship, no matter what she costs, but if you do build her for less than a million and a half, we will give you half of what you save under that million and a half, in addition to your $135,000.' In other words, if we can build her for a million and three hundred thousand dollars, the Government saves $100,000 and we get $100,000 for saving the $200,000.

SENATOR VARDAMAN: But you still get the premium?

MR. POWELL: It is not a premium, it is a fee; it is the same as the lawyer's fee for taking care of his client, or the doctor's fee for taking care of his patient.

SENATOR VARDAMAN: In the estimates you make, you estimate that that is about the cost of the ship?

MR. POWELL: Yes, sir.

SENATOR VARDAMAN: With the labor and material at the price today?

MR. POWELL: Yes.

SENATOR VARDAMAN: But if it happens to go up, what then?

MR. POWELL: We take all the risk of the material. If the material goes up we simply lose our chance of making that extra stake.

SENATOR VARDAMAN: Then what is it that you do not take the risk of losing on?

MR. POWELL: We are not taking any risk on it, Senator. We are not taking any risk on it and on that amount of a fee no shipbuilder can afford to take a risk. If we have to build ships that cost a million and a half at $135,000, there is not any margin that will allow us to take a risk.

SENATOR VARDAMAN: Suppose you build that ship for a million and a half. Does not that give you a fair profit on that investment?

MR. POWELL: No, sir; we could not live on that basis.

SENATOR VARDAMAN: You could not?

MR. POWELL: No, sir.

SENATOR VARDAMAN: Could you give the Government a price for that ship?

MR. POWELL: If we gave you a price on the ship, we would want about $2,000,000 for it. In other words, if we took the risk instead of the Government, we would have to have at least that much additional money." Do you remember so testifying, and is that testimony a correct statement of the situation with respect to the Navy contracts?

A. I have no doubt I so testified. I remember very well appearing before the Committee.

Q. That testimony correctly describes the situation with respect to the Navy contracts?

A. I should say yes. It is just about in line with what I testified to previously, that the estimated costs might overrun fifty percent.

Q. Aside from the figures mentioned in that testimony, it would be equally applicable to the Fleet contracts, would it not?

A. May I see that testimony for a minute?

MR. BROWN: Yes, indeed.

BY MR. EVANS:

Q. Is that question clear to you, Mr. Powell?

A. That is why I wanted to see the testimony.

BY MR. BROWN:

Q. What I am asking you is, aside from the difference between the figures mentioned relating to

Navy contracts and the figures relating to the Fleet Corporation contracts, whether or not the balance of your testimony would be equally applicable in explaining the purposes of the Bethlehem contracts.

A. I should say in general we were working for the Emergency Fleet Corporation for a fee with an agreed-on price, and for one-half of the saving. So far as this explains that form of contract, what I said also applies to the form of contract with the Emergency Fleet.

Q. I ask you whether, aside from the differences in the figures between the Navy contracts and the Fleet contracts, the balance of your testimony is equally applicable with respect to the Fleet contracts.

A. I should say so, yes.

Q. In other words, as I understand you to testify, under both the Fleet and the Navy contracts the probable cost or base price was intended to be based upon wage rates and material costs existing at the time of the contracts? Is that correct?

A. Yes, with the definite understanding that it was going to be set to give us a chance to make a saving. That was understood by everybody in both the conferences with the Navy Department and the Fleet Corporation.

Q. And that saving was to be effected, was it not, by virtue of Bethlehem's ability to increase the efficiency of labor. In other words, to train them and stimulate them?

A. That was one item of a number on which we expected to effect savings.

Q. I suppose the other item was that you expected to be able to effect a great saving on your purchase of plates and shapes?

EXHIBIT A

STIPULATION OF FACTS

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DISTRICT COURT OF THE UNITED STATES
Eastern District of Pennsylvania

The United States of America
Complainant,

against

Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd.; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

In Equity, No. 3315 March Term, 1925

Bethlehem Shipbuilding Corporation, Ltd.,
Plaintiff,

against

United States Shipping Board Emergency Fleet Corporation,
Defendant.

At Law, No. 11970 December Sessions, 1925

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to the above entitled causes, as follows:

1. The United States of America is herein called the Government; United States Shipping Board Emergency Fleet Corporation, the Fleet Corporation; Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Ship; Fore River Shipbuilding Corporation, Fore River; Union Iron Works Company, Union.

2. Nothing in this stipulation shall prevent any party from introducing evidence not at variance with the facts stipulated herein with respect to matters relevant to the issues in said causes, whether any such matter is referred to in this stipulation or not. Nothing herein contained shall foreclose the Government or the Fleet Corporation from contending, either as a question of fact or of law or of mixed fact and law, that the acts, proceedings and under-

takings of the Fleet Corporation herein referred to or any of them were done, performed or entered into by it as agent of the Government, or foreclose Bethlehem Steel Corporation, Bethlehem Steel Company, Bethlehem Ship, Fore River or Union from contending that such acts, proceedings and undertakings or any of them were not done, performed or entered into by the Fleet Corporation as such agent.

3. In the case of each of the contracts hereinafter mentioned, numbered 177 S. C., 179 S. C., 182 S. C., 183 S. C., 184 S. C., 191 S. C., 230 S. C., 299 S. C., 300 S. C. and 465 S. C., the increase of the estimated cost, the costs incurred, the surplus materials and supplies delivered and the payments for and on account of the construction of the vessels, completed thereunder, as hereinafter stated, were caused, incurred, delivered or made, as the case may be, in equal portions on account of such vessels respectively. In the case of each of the contracts hereinafter mentioned, numbered 178 S. C., 226 S. C., 301 S. C. and 314 S. C., under each of which two types of vessels, viz.: tank vessels and cargo vessels, were constructed, the increase of the estimated cost, the costs incurred, the surplus materials and supplies delivered and the payments, for and on account of the vessels completed thereunder, as hereinafter stated, were caused, incurred, delivered or made, as the case may be, as between such two types of vessels in the following respective percentages of the respective totals thereof and, as between the vessels of the same type completed under each such contract, in equal portions of the respective amounts thereof so applicable to the total number of such vessels, to wit:

Exhibit A

Contract No.	*Number of each type of vessel constructed*	*Percentage of total applicable to such number and type of vessel*
#178 S. C.	3 tank	58%
	3 cargo	42%
#226 S. C.	4 tank	65%
	3 cargo	35%
#301 S. C.	6 tank	66%
	3 cargo	34%
#314 S. C.	3 tank	39%
	7 cargo	61%

3-a. The statements contained in this stipulation and particularly the references to revised estimated cost contained therein are made without prejudice to the contention of the Fleet Corporation and the Government that the provisions of Article XIX of the respective contracts concerning payment to Bethlehem Ship of one-half the difference between the revised estimated cost and the actual cost of the ships therein referred to are illegal and invalid.

Increased Wages Under the West Coast Contracts

4. Contracts numbered 177 S. C., 191 S. C., 230 S. C. and 301 S. C. hereinafter mentioned, covered the construction of vessels at the Union plant of Bethlehem Ship. Article XIX, except for the amounts of estimated costs and fixed fees therein specified, is the same in each of said contracts. On November 4, 1917, the Shipbuilding Labor Adjustment Board promulgated an award prescribing cer-

tain rules as to conditions of employment, including a schedule of minimum wages retroactive to September 22, 1917, applicable to the shipyards of the San Francisco Bay District. On November 24, 1917, the Fleet Corporation directed Bethlehem Ship immediately to put into effect at its Union plant, and Bethlehem Ship did thereupon put into effect at such plant, the schedule of wages so promulgated by said Adjustment Board. Pursuant to paragraph V of said award, the Fleet Corporation, on December 10, 1917, extended said schedule to ten additional crafts. On December 10, 1917, the Fleet Corporation transmitted to Bethlehem Ship the following statement:

STATEMENT SUBMITTED BY THE NAVY DEPARTMENT AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

In order to provide a proper stimulus to increase the output of ships in the shipyards of the Pacific Coast, and in order to encourage men who live at great distances to leave their homes and enter on service in the shipyards, the United States Shipping Board Emergency Fleet Corporation will pay to all employees of shipyards on the Pacific Coast, with the exception of those working under the Seattle agreement, a war service payment of ten per cent., effective on and after December 15, 1917, to all men who work for six consecutive days in any week a total of not less than 48 hours, provided that men prevented from working on account of the elements, physical condition or any unavoidable cause, will not be denied the benefits provided for under this statement. The payment to be computed on straight time at the minimum rate

provided in the award, and on February 1, 1918, a further stimulus to attract men to the shipbuilding industry will be provided by converting the above to a permanent increase of ten per cent. of the Adjustment Board rates, provided that nothing in this memorandum shall prevent a re-hearing of this matter by the Wage Adjustment Board. It is stipulated that for the purpose of such re-hearing the award of the Adjustment Board shall be considered as expiring at all Pacific coast plants six months from the date at which the award became effective in the Puget Sound District, that is, February 1, 1918.

December 8th, 1917.

(Signed) Franklin D. Roosevelt
" Charles Piez
" William Blackman
" J. A. Franklin
" James O'Connell
" John I. Nolan

On February 1, 1918, said war service payment of 10%, in accordance with said statement, dated December 8, 1917, became a permanent increase of 10% over the schedule of wages established by the award of said Adjustment Board, dated November 4, 1917, as so extended. There is dispute between the parties as to what is the schedule of wages referred to in Article XIX of each of said contracts. The contentions of Bethlehem Ship on the one hand and of the Fleet Corporation and the Government on the other hand with respect to said schedule, are as follows:

A. Bethlehem Ship contends that the schedule of wages referred to in Article XIX of each

said contract is the schedule so promulgated by said Adjustment Board on November 4, 1917, as extended to said ten additional crafts, but not including said war service payment as originally promulgated or as converted either in whole or in part. Such contention is hereinafter called Contention A.

B. The Fleet Corporation and the Government contend that the schedule of wages referred to in Article XIX of each said contract is the schedule so promulgated by said Adjustment Board as so extended, plus the war service payment of 10% as converted in accordance with the statement of December 8, 1917, into a general permanent increase effective on February 1, 1918. Such contention is hereinafter called Contention B.

C. In the alternative, Bethlehem Ship contends that if the schedule of wages referred to in Article XIX of each said contract includes said war service payment at all (which, however, it denies) said schedule of wages includes said war service payment only as promulgated in accordance with said statement dated December 8, 1917, before the flat increase of 10% was effected as of February 1, 1918. Such contention is hereinafter called Contention C.

Increased Wages Under the East Coast Contracts

5. Contracts numbered 178 S. C., 179 S. C., 183 S. C., 184 S. C., 196 S. C., 226 S. C., 299 S. C., 300 S.

C., 314 S. C. and 465 S. C., hereinafter mentioned, covered the construction of vessels at the Fore River, Moore, Harlan and Sparrows Point shipyards of Bethlehem Ship, hereinafter sometimes collectively referred to as the East Coast shipyards. With respect to the schedule of wages therein specified, Article XIX is the same in all of said contracts except as to the respective Navy Yards therein mentioned and with the further exception that in said contract 465 S. C. the wage board referred to is referred to as the Shipbuilding Labor Adjustment Board. In November and December, 1917, the Fleet Corporation authorized Bethlehem Ship to put into effect on the ships requisitioned by the United States at each of its four East Coast shipyards, the rates then prevailing at the respective Navy Yards nearest to such shipyard and on January 3, 1918, Bethlehem Ship actually had, in so far as was practicable, put into effect at each of its East Coast shipyards such rates. Thereafter, and on various dates, to wit, on February 14, 1918, for the Harlan and Sparrows Point shipyards; on March 1, 1918, again for the Sparrows Point shipyard; on April 6, 1918, for the Fore River and Moore shipyards, and on October 24, 1918, for all said four shipyards, the Shipbuilding Labor Adjustment Board made awards increasing the rates of wages payable to labor engaged in ship construction at said shipyards. Pursuant to said awards, the Fleet Corporation, beginning with the award of February 14, 1918, from time to time directed Bethlehem Ship to increase, and in accordance with such directions Bethlehem Ship did thereupon so increase, the rates of wages paid to its workmen. There is dispute between the parties as to what is the schedule of wages referred to in said Article XIX of each of said contracts. The contentions of Bethlehem Ship

on the one hand and of the Fleet Corporation and the Government on the other are as follows:

D. Bethlehem Ship contends that the schedule of wages referred to in Article XIX of each said contract is the schedule of wages in force on January 3, 1918, at the Navy Yard therein specified. Such contention is hereinafter called Contention D.

E. The Fleet Corporation and the Government contend that the language of Article XIX of each said contract is so uncertain, indefinite and conflicting that it is impossible to say what schedule is meant thereby and that the increased labor cost incurred by Bethlehem Ship cannot be ascertained in accordance therewith. The Fleet Corporation and the Government concede, however, that this contention does not apply to the amount of increased wages paid by Bethlehem Ship to its subcontractors at the direction of the Fleet Corporation, for the reason that such increases were over and above definite and certain schedules of wages being paid by subcontractors before the increases were ordered by the Fleet Corporation. Said contention is hereinafter called Contention E.

F. In the alternative, the Fleet Corporation and the Government contend that if the schedule of wages referred to in Article XIX of each said contract can be identified at all, it is the schedule of wages in effect after said awards of the Shipbuilding Labor Adjustment Board, dated February 14, 1918, for the Harlan and Sparrows Point shipyards and April 6, 1918, for

the Fore River and Moore Shipyards. Such contention is hereinafter called Contention F.

West Coast Contract No. 177 S. C.

(Bethlehem Ship's First Cause of Action)

6. Under date of December 31, 1917, a contract, known as Contract No. 177 S. C., covering the construction at the Union plant of twelve steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 5 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 1-A annexed to the statement in the action second above entitled.

7. Under date of April 25, 1918, an agreement supplemental to Contract No. 177 S. C., was executed and delivered, a copy of which, subject to correction upon comparison with the original thereof, is Exhibit 23 annexed to said answer of Bethlehem Ship and Exhibit 1-B annexed to said statement. Under date of July 17, 1918, a letter was transmitted to and received by Bethlehem Ship, a copy of which, subject to correction upon comparison with the original thereof, is Exhibit 24 annexed to said answer of Bethlehem Ship and Exhibit 1-C annexed to said statement.

8. Bethlehem Ship completed and delivered said twelve steel tank vessels with the changes mentioned in paragraph 13 hereof in accordance with the terms and provisions of said contract No. 177 S. C., and provided the special improvements, tools and equipment covered by Article XXIII thereof as modified

by said agreement dated April 25, 1918, and the facilities covered by said letter dated July 17, 1918, in accordance with the terms and provisions of said Article XXVIII as so modified and said letter.

9. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract and of the cost of said special improvements, tools and equipment and facilities was made by the Fleet Corporation.

10. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $22,466,351.20

11. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$2,400.00
Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	492.65

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

12. The Fleet Corporation and the Government concede that in accordance with the terms and provisions of Article XXVIII of said contract No. 177 S. C., as modified as in paragraph 7 hereof stated, and of said letter dated July 17, 1918, Bethlehem Ship incurred in the construction and providing of the special improvements, tools, equipment and facilities covered thereby items of cost aggregating $1,550,000.00

Bethlehem Ship's statement of the cost incurred by it in the construction and providing of said special improvements, tools, equipments and facilities showing the portions of such cost incurred with respect to the various parts thereof amounting in the aggregate to $1,550,533.68 is annexed to this stipulation and marked Exhibit A. Bethlehem Ship, however, does not claim that it became entitled to be paid on account of the construction and providing of said special improvements, tools, equipments and facilities in excess of said amount of $1,550,000 of cost conceded to have been incurred by it as above stated.

13. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention), described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$25,440,000.00
Increased labor cost	2,394,570.96

Conceded net cost of changes and extras	60,495.28
Revised Estimated Cost	$27,895,066.24
Deduct conceded actual cost (i. e. $22,466,351.20) reduced by value of surplus materials and supplies (i. e. $53,859.63)	$22,412,491.57
Difference	$ 5,482,574.67

On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$25,440,000.00
Increased labor cost	1,572,938.47
Conceded net cost of changes and extras	60,495.28
Revised Estimated Cost	$27,073,433.75
Deduct conceded actual cost (i. e. $22,466,351.20) reduced by value of surplus materials and supplies (i. e. $53,859.63)	22,412,491.57
Difference	$ 4,660,942.18

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$25,440,000.00
Increased labor cost	1,983,754.71
Conceded net cost of changes and extras	$ 60,495.28
Revised Estimated Cost	$27,484,249.99
Deduct conceded actual cost (i. e. $22,466,351.20) reduced by value of surplus materials and supplies (i. e. $53,859.63)	22,412,491.57
Difference	$ 5,071,758.42

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 11 hereof shall be found to be proper items of cost.

14. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$22,792,960.96
fixed fees specified in said contract	2,268,000.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	1,980,242.43
Total on account of said vessels	$27,041,203.39
said special improvements, tools and equipment	1,549,848.68

East Coast Contract No. 178 S. C.

(Bethlehem Ship's Second Cause of Action)

15. Under date of December 31, 1917, a contract, known as Contract No. 178 S. C., covering the construction at the Harlan plant of three steel tank vessels and three cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 6 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 2-A annexed to the statement in the action second above entitled.

16. Under date of June 20, 1918, an agreement supplemental to Contract No. 178 S. C., was executed and delivered, a copy of which, subject to correction upon comparison with the original thereof, is Exhibit 28 annexed to said answer of Bethlehem Ship and Exhibit 2-B annexed to said statement.

17. Bethlehem Ship completed and delivered said three steel tank vessels and said three cargo vessels with the changes mentioned in paragraph 22 hereof in accordance with the terms and provisions of said contract No. 178 S. C., and constructed and provided the extensions, tools, equipment and installations covered by Article XXVIII of said contract as modified by said agreement dated June 20, 1918, in accordance with the terms and provisions of said Article XXVIII as so modified.

18. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the cost of said special improvements, tools, equipment and installations was

made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Philadelphia, Pennsylvania, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision Marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vesesls was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

19. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $9,792,015.63

20. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the following amount of cost incurred in removing and rebuilding parts of said vessels and the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of this stipulation, viz:

Cost incurred in removing and rebuilding certain tanks and other parts of said vessels	$199,049.07
Portion of unclaimed straight wages set forth in paragraph 314 hereof	2,310.56

The Fleet Corporation and the Government concede that said amount of cost of removing and rebuilding was incurred, but deny that said cost of removing and rebuilding, either in whole or in part, is a proper item of actual cost within the definition of actual cost contained in Article XVII of said contract for the reason that said cost of removing and rebuilding was incurred in connection with work condemned by the Fleet Corporation. The Fleet Corporation and the Government further concede that, subject to the terms of said paragraph 314 of this stipulation, the aforesaid apportionment of unclaimed wages referred to in said paragraph 314 is arithmetically correct as applicable to said vessels.

21. The Fleet Corporation and the Government concede that in accordance with the terms and provisions of Article XXVIII of said contract No. 178 S. C., as modified as in paragraph 16 hereof stated, Bethlehem Ship incurred in the construction and providing of the extensions, tools, equipment and installations covered thereby items of cost aggregating $141,000.00

Bethlehem Ship's statement of the cost incurred by it in the construction and providing of said extensions, tools, equipments and insfallations showing the portions of such cost incurred with respect to

the various parts thereof amounting in the aggregate to $189,452.35 is annexed to this stipulation and marked Exhibit B. Bethlehem Ship, however, does not claim that it became entitled to be paid on account of the construction and providing of such extensions, tools, equipments and installations in excess of said amount of $141,000 of cost conceded to have been incurred by it as above stated.

22. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contenti D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.		
Estimated cost specified in Article XIX of said contract	$ 8,886,000.00	
Increased labor cost	$ 1,331,183.17	
Conceded net cost of changes and extras	188,959.00	
Revised Estimated Cost		$10,406,142.17
Deduct conceded actual cost (i. e. $9,792,015.63) reduced by value of surplus materials and supplies (i. e. $34,452.84)		9,757,562.79
Difference		$ 648,579.38
On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.		

Estimated cost specified in Article XIX of said contract	$ 8,886,000.00
Increased labor cost paid to subcontractors	5,220.04
Conceded net cost of changes and extras	188,959.00
Revised Estimated Cost	$ 9,080,179.04
Deduct conceded actual cost (i. e. $9,792,015.63) reduced by value of surplus materials and supplies (i. e. $34,452.84)	9,757,562.79
Difference (no savings)	

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$ 8,886,000.00
Increased labor cost	415,530.84
Conceded net cost of changes and extras	188,959.00
Revised Estimated Cost	$ 9,490,489.84
Deduct conceded actual cost (i. e. $9,792,015.63) reduced by value of surplus materials and supplies (i. e. $34,452.84)	9,757,562.79
Difference (no savings)	

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 20 hereof shall be found to be proper items of cost.

23. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$ 9,803,700.22
fixed fees specified in said contract	769,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	113,610.02
Total on account of said vessels	$10,686,810.24
said special improvements, tools and equipment	140,711.02

East Coast Contract No. 179 S. C.

(Bethlehem Ship's Third Cause of Action)

24. Under date of December 31, 1917, a contract, known as Contract No. 179 S. C., covering the construction at the Sparrows Point plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 7 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 3 annexed to the statement in the action second above entitled.

25. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned

in paragraph 28 hereof in accordance with the terms and provisions of said contract.

26. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

27. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $5,556,330.41

28. The difference between the revised estimated cost of said vessels and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in para-

graph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,210,000.00
Increased labor cost	851,436.38
Conceded net cost of changes and extras	24,328.00
Revised Estimated Cost	$7,085,764.38
Deduct conceded actual cost (i. e. $5,556,330.41) reduced by value of surplus materials and supplies (i. e, $3,785.34)	5,552,545.07
Difference	$1,533,219.31

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,210,000.00
Increased labor cost paid to subcontractors	$ 1,069.69
Conceded net cost of changes and extras	24,328.00
Revised Estimated Cost	$6,235,397.69
Deduct conceded actual cost (i. e. $5,556,330.41) reduced by value of surplus materials and supplies (i. e. $3,785.34)	5,552,545.07
Difference	$ 682,852.62

On Contention F, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,210,000.00
Increased labor cost	243,927.50
Conceded net cost of changes and extras	24,328.00
Revised Estimated Cost	$6,478,255.50
Deduct conceded actual cost (i. e. $5,556,330.41) reduced by value of surplus materials and supplies (i. e. $3,785.34)	5,552,545.07
Difference	$ 925,710.43

29. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$5,657,186.58
fixed fees specified in said contract	539,998.90
the difference between the actual cost of said vessels and the revised estimated cost thereof	515,223.37
Total	$6,712,408.85

East Coast Contract No. 182 S. C.

(Bethlehem Ship's Fourth Cause of Action)

30. Under date of December 31, 1917, a contract, known as Contract No. 182 S. C., covering the con-

struction at the Sparrows Point plant of two troop ships, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 8 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 4 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship prior to February 15, 1918. Said contract was made pursuant to letters which had passed between Bethlehem Ship and the Fleet Corporation on the respective dates thereof, copies of which marked Exhibits E and F are annexed hereto.

31. Thereafter, at the direction of the Fleet Corporation and with the consent of Bethlehem Ship, the plans and specifications for said vessels were so changed as to provide for the construction under said contract of two combined passenger and cargo vessels instead of two troop ships.

32. Bethlehem Ship completed and delivered said two passenger and cargo vessels in accordance with the terms and provisions of said contract and with said changed plans and specifications.

33. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation.

34. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $11,348,258.26

35. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost incurred by it in the construction of and on account of said vessels the following amount of royalty paid by it to Redington Standard Fittings Company on account of Curtis turbine engines installed in said vessels; the Fleet Corporation and the Government concede that said amount of royalty was so paid as so asserted and claimed, but deny that said amount of royalty, either in whole or in part, is a proper item of actual cost within the definition of actual cost contained in Article XVII of said contract, viz.:

Amount of royalty paid on account of Curtis turbines in excess of the amount thereof included in the cost conceded in paragraph 34 hereof	$ 6,000.00

36. The amount of the cost of said vessels is for the purpose of determining profit thereon, to be reduced by the value of the surplus materials and supplies, viz.: $152,598.37

37. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$11,495,435.22
10% of cost for profit as specified in said contract	800,000.00
Total	$12,295,435.22

East Coast Contract No. 183 S. C.

(Bethlehem Ship's Fifth Cause of Action)

38. Under date of December 31, 1917, a contract, known as Contract No. 183 S. C., covering the construction at the Fore River plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 9 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 5 annexed to the statement in the action second above entitled.

39. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned in paragraph 43 hereof in accordance with the terms and provisions of said contract.

40. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of charges and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Boston, Massachusetts, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of April 6, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in la-

bor cost under the provisions of Article XIX of said contract.

41. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $5,307,830.87

42. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 316 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$3,605.09
Portion of Soldiers' Bonus Tax set forth in paragraph 316 hereof	3,012.70

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 316, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

43. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,595,000.00
Increased labor cost	776,639.20

Conceded net deductions for changes and extras	12,791.00
Revised Estimated Cost	$6,358,848.20
Deduct conceded actual cost (i. e. $5,307,830.87) reduced by value of surplus materials and supplies (i. e. $19,965.44)	5,287,865.43
Difference	$1,070,982.77

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,595,000.00
Increased labor cost	None
Conceded net deductions for changes and extras	12,791.00
Revised Estimated Cost	$5,582,209.00
Deduct conceded actual cost (i. e. $5,307,830.87) reduced by value of surplus materials and supplies (i. e. $19,965.44)	$5,287,865.43
Difference	$ 294,343.57

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,595,000.00
Increased labor cost	371,666.99
Conceded net deductions for changes and extras	12,791.00
Revised Estimated Cost	$5,953,875.99
Deduct conceded actual cost (i. e. $5,307,830.87) reduced by value of surplus materials and supplies (i. e. $19,965.44)	$5,287,865.43
Difference	$ 666,010.56

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 42 hereof shall be found to be proper items of cost.

44. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$5,368,867.81
fixed fees specified in said contract	499,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	402,056.25
Total	$6,270,424.06

East Coast Contract No. 184 S. C.

45. Under date of December 31, 1917, a contract, known as Contract No. 184 S. C., covering the con-

struction at the Moore plant of six tug boats, afterward increased under the option in paragraph XXIX of said contract to the total number of twenty tug boats, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof is Exhibit 10 annexed to the answer of Bethlehem Ship on file in the suit first above entitled.

46. Bethlehem Ship completed and delivered said twenty tug boats with the changes mentioned in paragraph 50 hereof in accordance with the terms and provisions of said contract.

47. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Brooklyn in the City of New York, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of April 6, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

48. The Fleet Corporation and the Government concede that items of ae-

tual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $6,140,519.13

49. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$1,630.17

The Fleet Corporation and the Government concede that, subject to the terms of said paragraph 314, said apportionment is arithmetically correct as applicable to said vessels.

50. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,860,000.00
Increased labor cost	993,934.80
Conceded net cost of changes and extras	525,876.24
Revised Estimated Cost	$7,379,811.04
Deduct conceded actual cost (i. e. $6,140,519.13) reduced by value of	

surplus materials and supplies (i. e. $54,225.65)	6,086,293.48
Difference	$1,293,517.56

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,860,000.00
Increased labor cost paid to sub-contractors	3,987.46
Conceded net cost of changes and extras	525,876.24
Revised Estimated Cost	$6,389,863.70
Deduct conceded actual cost (i. e. $6,140,519.13) reduced by value of surplus materials and supplies (i. e. $54,225.65)	$6,086,293.48
Difference	$ 303,570.22

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,860,000.00
Increased labor cost	400,369.64
Conceded net cost of changes and extras	525,876.24
Revised Estimated Cost	$6,786,245.88

Deduct conceded actual cost (i. e. $6,140,519.13) reduced by value of surplus materials and supplies (i. e. $54,225.65)	6,086,293.48
Difference	699,952.40

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that the additional item of cost referred to in paragraph 49 hereof shall be found to be a proper item of cost.

51. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$6,543,048.69
fixed fees specified in said contract	656,909.92
the difference between the actual cost of said vessels and the revised estimated cost thereof	470,053.70
Total	$7,670,012.31

West Coast Contract No. 191 S. C.

(Bethlehem Ship's Sixth Cause of Action)

52. Under date of December 31, 1917, a contract, known as Contract No. 191 S. C., covering the construction at the Union plant of four steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 11 annexed to the answer of Bethlehem Ship on file in the suit first

above entitled and Exhibit 6 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on February 21, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits G and H are annexed hereto.

53. Bethlehem Ship completed and delivered said four steel cargo vessels with the changes mentioned in paragraph 57 hereof in accordance with the terms and provisions of said contract.

54. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract was made by the Fleet Corporation.

55. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $6,349,258.11

56. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$800.00

Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	4,105.42

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

57. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$8,514,000.00	
Increased labor cost	$418,304.45	
Conceded net cost of changes and extras	103,760.52	
Revised Estimated Cost		9,036,064.97
Deduct conceded actual cost (i. e. $6,349,258.11) reduced by value of surplus materials and supplies (i. e. $3,869.37)		6,345,388.74
Difference		$2,690,676.23

On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$8,514,000.00
Increased labor cost	145,190.56

Conceded net cost of changes and extras	103,760.52
Revised Estimated Cost	$8,762,951.08
Deduct conceded actual cost (i. e. $6,349,258.11) reduced by value of surplus materials and supplies (i. e. $3,869.37)	6,345,388.74
Difference	$2,417,562.34

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$8,514,000.00
Increased labor cost	281,747.51
Conceded net cost of changes and extras	103,760.52
Revised Estimated Cost	$8,899,508.03
Deduct conceded actual cost (i. e. $6,349,258.11) reduced by value of surplus materials and supplies (i. e. $3,869.37)	6,345,388.74
Difference	$2,554,119.29

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 56 hereof shall be found to be proper items of cost.

58. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$6,405,741.11
fixed fees specified in said contract	766,260.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	1,100,000.00
Total	$8,272,001.11

East Coast Contract No. 196 S. C.

(Bethlehem Ship's Seventh Cause of Action)

59. Under date of December 31, 1917, a contract, known as Contract No. 196 S. C., covering the construction at the Sparrows Point plant of one steel cargo vessel was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 12 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 7 annexed to the statement in the action second above entitled.

60. Bethlehem Ship completed and delivered said steel cargo vessel with the changes mentioned in paragraph 63 hereof in accordance with the terms and provisions of said contract.

61. After the completion and delivery by Bethlehem Ship of said vessel an audit of the total cost of said vessel was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessel and the amount of the increase in labor cost by reason of increases in the

rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessel was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

62. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessel amounting in the aggregate to $1,123,782.08

63. The difference between the revised estimated cost of said vessel and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$1,295,000.00
Increased labor cost	132,318.73
Conceded net cost of changes and extras	5,940.11
Revised Estimated Cost	$1,433,258.84

Deduct conceded actual cost	1,123,782.08
Difference	$ 309,476.76

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$1,295,000.00
Increased labor cost paid to subcontractors	317.50
Conceded net cost of changes and extras	5,940.11
Revised Estimated Cost	$1,301,257.61
Deduct conceded actual cost	1,123,782.08
Difference	$ 177,475.53

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$1,295,000.00
Increased labor cost	2,654.94
Conceded net cost of changes and extras	5,940.11
Revised Estimated Cost	$1,303,595.05
Deduct conceded actual cost	1,123,782.08
Difference	$ 179,812.97

64. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessel	$1,142,822.60
fixed fee specified in said contract	115,400.56
the difference between the actual cost of said vessel and the revised estimated cost thereof	112,656.84
Total	$1,370,880.00

East Coast Contract No. 226 S. C.

(Bethlehem Ship's Eighth Cause of Action)

65. Under date of March 18, 1918, a contract, known as Contract No. 226 S. C., covering the construction at the Sparrows Point plant of four steel tank vessels, and three cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 13 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 8 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 1, 1918. Said contract was made pursuant to letters and a telegram which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits I, J and K are annexed hereto.

66. Bethlehem Ship completed and delivered said four steel tank vessels and said three cargo vessels with the changes mentioned in paragraph 69 hereof in accordance with the terms and provisions of said contract.

67. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

68. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $10,904,547.82

69. The difference between the revised estimated cost of said vessels and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$11,885,000.00
Increased labor cost	1,969,148.85
Conceded net cost of changes and extras	124,402.00
Revised Estimated Cost	$13,978,550.85
Deduct conceded actual cost (i. e. $10,904,547.82) reduced by value of surplus materials and supplies (i. e. $13,118.77)	10,891,429.05
Difference	$ 3,087,121.80

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$11,885,000.00
Increased labor cost paid to subcontractors	2,080.61
Conceded net cost of changes and extras	124,402.00
Revised Estimated Cost	$12,011,482.61
Deduct conceded actual cost (i. e. $10,904,547.82) reduced by value of surplus materials and supplies (i. e. $13,118.77)	10,891,429.05
Difference	$ 1,120,053.56

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,885,000.00
Increased labor cost	679,185.12
Conceded net cost of changes and extras	124,402.00
Revised Estimated Cost	$12,688,587.12
Deduct conceded actual cost (i. e. $10,904,547.82) reduced by value of surplus materials and supplies (i. e. $13,118.77).	10,891,429.05
Difference	$ 1,797,158.07

70. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$11,149,326.76
fixed fees specified in said contract	1,057,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	837,579.61
Total	$13,044,406.37

West Coast Contract No. 230 S. C.

(Bethlehem Ship's Ninth Cause of Action)

71. Under date of April 22, 1918, a contract, known as Contract No. 230 S. C., covering the con-

struction at the Union plant of two steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 14 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 9 annexed to the stipulation in the action second above entitled.

72. Bethlehem Ship completed and delivered said two steel cargo vessels with the changes mentioned in paragraph 76 hereof in accordance with the terms and provisions of said contract.

73. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract was made by the Fleet Corporation.

74. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to . . . $3,218,669.91

75. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$400.00
Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	547.39

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

76. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$4,150,000.00
Increased labor cost	312,172.01
Conceded net cost of changes and extras	17,604.20
Revised Estimated Cost	$4,479,776.21
Deduct conceded actual cost (i. e. $3,218,669.91) reduced by value of surplus materials and supplies (i. e. $26,433.82)	3,192,236.09
Difference	$1,287,540.12
On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$4,150,000.00
Increased labor cost	205,264.79
Conceded net cost of changes and extras	17,604.20
Revised Estimated Cost	$4,372,868.99

Deduct conceded actual cost (i. e. $3,218,669.91) reduced by value of surplus materials and supplies (i. e. $26,433.82)	3,192,236.09
Difference	$1,180,632.90

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$4,150,000.00
Increased labor cost	258,718.40
Conceded net cost of changes and extras	17,604.20
Revised Estimated Cost	$4,426,322.60
Deduct conceded actual cost (i. e. $3,218,669.91) reduced by value of surplus materials and supplies (i. e. $26,433.82)	3,192,236.09
Difference	$1,234,086.51

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 75 hereof shall be found to be proper items of cost.

77. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$3,248,727.48

fixed fees specified in said contract	373,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	455,000.00
Total	$4,077,227.48

East Coast Contract No. 299 S. C.

(Bethlehem Ship's Tenth Cause of Action)

78. Under date of April 30, 1918, a contract, known as Contract No. 299 S. C., covering the construction at the Fore River plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 15 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 10 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 27, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L and M are annexed hereto.

79. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned in paragraph 83 hereof in accordance with the terms and provisions of said contract.

80. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation

also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Boston, Massachusetts, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of April 6, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

81. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $4,867,111.57

82. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 316 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$3,833.19
Portion of Soldiers' Bonus Tax set forth in paragraph 316 hereof	3,012.70

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 316, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

83. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,550,000.00
Increased labor cost	635,349.36
Conceded net deduction for changes and extras	10,581.00
Revised Estimated Cost	$6,174,768.36
Deduct conceded actual cost (i. e. $4,867,111.57) reduced by value of surplus materials and supplies (i. e. $18,516.22)	4,848,595.35
Difference	$1,326,173.01
On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,550,000.00
Increased labor cost	None
Conceded net deduction for changes and extras	10,581.00
Revised Estimated Cost	$5,539,419.00

Deduct conceded actual cost (i. e. $4,867,111.57) reduced by value of surplus materials and supplies (i. e. $18,516.22)	4,848,595.35
Difference	$ 690,823.65

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,550,000.00
Increased labor cost	319,025.08
Conceded net deduction for changes and extras	10,581.00
Revised Estimated Cost	$5,858,444.08
Deduct conceded actual cost (i. e. $4,867,111.57) reduced by value of surplus materials and supplies (i. e. $18,516.22)	4,848,595.35
Difference	$1,009,848.73

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 82 hereof shall be found to be proper items of cost.

84. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$4,897,050.21

fixed fees specified in said contract	499,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	479,402.75
Total	$5,875,952.96

East Coast Contract No. 300 S. C.

(Bethlehem Ship's Eleventh Cause of Action)

85. Under date of April 30, 1918, a contract, known as Contract No. 300 S. C., covering the construction at the Sparrows Point plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 16 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 11 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 27, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L and M are annexed hereto.

86. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned in paragraph 89 hereof in accordance with the terms and provisions of said contract.

87. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras

in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

88. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $5,125,053.23

89. The difference between the revised estimated cost of said vessels and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,000,000.00
Increased labor cost	899,911.67
Conceded net cost of changes and	

extras	41,039.00
Revised Estimated Cost	$6,940,950.67
Deduct conceded actual cost (i. e. $5,125,053.23) reduced by value of surplus materials and supplies (i. e. $2,465.36)	5,122,587.87
Difference	$1,818,362.80

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$6,000,000.00
Increased labor cost paid to subcontractors	560.86
Conceded net cost of changes and extras	41,039.00
Revised Estimated Cost	$6,041,599.86
Deduct conceded actual cost (i. e. $5,125,053.23) reduced by value of surplus materials and supplies (i. e. $2,465.36)	5,122,587.87
Difference	$ 919,011.99

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$6,000,000.00

Increased labor cost	334,415.07
Conceded net cost of changes and extras	41;039.00
Revised Estimated Cost	$6,375,454.07
Deduct conceded actual cost (i. e. $5,125,053.23) reduced by value of surplus materials and supplies (i. e. $2,465.36)	5,122,587.87
Difference	$1,252,866.20

90. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$5,166,180.02
fixed fees specified in said contract	540,000.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	667,660.53
Total	$6,373,840.55

West Coast Contract No. 301 S. C.

(Bethlehem Ship's Twelfth Cause of Action)

91. Under date of April 30, 1918, a contract, known as Contract No. 301 S. C., covering the construction at the Union plant of six steel tank vessels and six cargo vessels, denominated by the Fleet Corporation as Hulls numbers 1676 to 1687, inclusive, was executed and delivered, a copy of which contract subject to correction upon comparison with the original thereof, is Exhibit 17 annexed to the answer of

Bethlehem Ship on file in the suit first above entitled and Exhibit 12 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 27, 1919. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L and M are annexed hereto. Thereafter, with respect to the construction of three of said cargo vessels, Hulls numbers 1685, 1686 and 1687, said contract was terminated by the Fleet Corporation after the construction thereof had been begun, but remained in operation with respect to the construction of said six tank vessels and three cargo vessels.

92. Bethlehem Ship completed and delivered said six tank vessels and three cargo vessels with the changes mentioned in paragraph 96 hereof in accordance with the terms and provisions of said contract.

93. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract was made by the Fleet Corporation.

94. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said completed vessels amounting in the aggregate to $15,344,832.08
and in the partial construction of said uncompleted vessels $699,746.46

and that upon said last named amount Bethlehem Ship is entitled to a fee for profit of ten per cent. thereof.

95. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said completed vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$1,711.22
Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	$328.43

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

96. The difference between the revised estimated cost of said completed vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$18,825,000.00
Increased labor cost	1,357,409.46
Conceded net cost of changes and extras	46,532.03
Revised Estimated Cost	$20,228,941.49

Deduct conceded actual cost (i. e. $15,344,832.08) reduced by value of surplus materials and supplies (i. e. $70,363.39)	15,274,468.69
Difference	$ 4,954,472.80

On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$18,825,000.00
Increased labor cost	898,230.47
Conceded net cost of changes and extras	46,532.03
Revised Estimated Cost	$19,769,762.50
Deduct conceded actual cost (i. e. $15,344,832.08) reduced by value of surplus materials and supplies (i. e. $70,363.39)	$15,274,468.69
Difference	$ 4,495,293.81

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$18,825,000.00
Increased labor cost	1,127,819.96
Conceded net cost of changes and extras	46,532.03
Revised Estimated Cost	$19,999,351.99

Deduct conceded actual cost (i. e. $15,344,832.08) reduced by value of surplus materials and supplies (i. e. $70,363.39)	15,274,468.69
Difference	$ 4,724,883.30

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 95 hereof shall be found to be proper items of cost.

97. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said completed vessels	$15,360,150.17
fixed fees for said completed vessels specified in said contract	1,694,250.00
the difference between the actual cost of said completed vessels and the revised estimated cost thereof	1,744,757.57
Total on account of completed vessels	$18,799,157.74
the actual cost of said uncompleted vessels	$ 814,685.34
fee for partial construction of said uncompleted vessels	26,604.85
Total on account of uncompleted vessels	$ 841,290.19

East Coast Contract No. 312 S. C.

98. Under date of May 15, 1918, a contract, known as Contract No. 312 S. C., covering the construction at the Sparrows Point plant of three steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original therof, is Exhibit 18 annexed to the answer of Bethlehem Ship on file in the suit first above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on July 19, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L, M and N are annexed hereto.

99. After Bethlehem Ship had begun work for the construction of said three steel cargo vessels and before the completion thereof, said contract was terminated by the Fleet Corporation and as to the further construction of said vessels was cancelled.

100. After such termination of said contract an audit of the total cost incurred by Bethlehem Ship in the partial construction of said vessels was made by the Fleet Corporation.

101. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the partial construction of said vessels amounting in the aggregate to $313,594.89 and that upon said amount Bethlehem Ship is entitled to a fee for profit of ten per cent. thereof.

102. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said uncompleted vessels	$392,387.49
fee for partial construction of said vessels	28,471.31
Total	$420,858.80

East Coast Contract No. 313 S. C.

(Bethlehem Ship's Thirteenth Cause of Action)

103. Under date of May 15, 1918, a contract, known as Contract No. 313 S. C., covering the construction at the Moore plant of ten tug boats, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 19 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 13 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on July 19, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L, M and N are annexed hereto.

104. After Bethlehem Ship had begun work for the construction of said ten tug boats and before the completion thereof, said contract was terminated by the Fleet Corporation and as to the further construction of said vessels was cancelled.

105. After such termination of said contract an audit of the total cost incurred by Bethlehem Ship

in the partial construction of said vessels was made by the Fleet Corporation.

106. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the partial construction of said vessels amounting in the aggregate to $ 488,192.25 and that upon said amount Bethlehem Ship is entitled to a fee for profit of ten per cent. thereof.

107. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said uncompleted vessels	$431,564.19
fee for partial construction of said vessels	21,402.99
Total	$452,967.18

East Coast Contract No. 314 S. C.

(Bethlehem Ship's Fourteenth Cause of Action)

108. Under date of May 15, 1918, a contract, known as Contract No. 314 S. C., covering the construction at the Harlan plant of three steel tank vessels and seven steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 20 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 14 annexed to the statement in the action sec-

ond above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on July 19, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L, M and N are annexed hereto.

109. Bethlehem Ship completed and delivered said three steel tank and seven steel cargo vessels with the changes mentioned in paragraph 113 hereof in accordance with the terms and provisions of said contract.

110. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Philadelphia, Pennsylvania, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

111. The Fleet Corporation and the Government concede that items of ac-

tual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $13,070,101.09

112. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$3,744.37

The Fleet Corporation and the Government concede that, subject to the terms of said paragraph 314, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

113. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,540,000.00
Increased labor cost	2,511,201.61
Conceded net cost of changes and extras	333,100.50
Revised Estimated Cost	$14,384,302.11

Deduct conceded actual cost (i. e. $13,070,101.09) reduced by value of surplus materials and supplies (i. e. $48,130.79)	$13,021,970.30
Difference	$1,362,331.81

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,540,000.00
Increased labor cost paid to subcontractors	5,418.52
Conceded net cost of changes and extras	333,100.50
Revised Estimated Cost	$11,878,519.02
Deduct conceded actual cost (i. e. $13,070,101.09) reduced by value of surplus materials and supplies (i. e. $48,130.79)	13,021,970.30
Difference (no saving)	

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,540,000.00
Increased labor cost	1,146,620.48
Conceded net cost of changes and	

extras	333,100.50
Revised Estimated Cost	$13,019,720.98
Deduct conceded actual cost (i. e. $13,070,101.09) reduced by value of surplus materials and supplies (i. e. $48,130.79)	$13,021,970.30
Difference	

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that the additional item of cost referred to in paragraph 112 hereof shall be found to be a proper item of cost.

114. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$13,172,512.23
fixed fees specified in said contract	1,038,577.35
the difference between the actual cost of said vessels and the revised estimated cost thereof	136,389.98
Total	$14,347,479.56

West Coast Contract No. 340 S. C.

(Bethlehem Ship's Fifteenth Cause of Action)

115. Under date of June 21, 1918, a contract, known as Contract No. 340 S. C., covering the construction and equipping at Alameda, California, of a shipbuilding plant and twenty steel troop ships and

the construction of an office building at Bethlehem, Pennsylvania, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 21 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 15 annexed to the statement in the action second above entitled.

116. After Bethlehem Ship had completed said office building and had begun the construction of said shipbuilding plant and had begun work for the construction of said vessels and before the completion of said plant or of any of said vessels, said contract was terminated by the Fleet Corporation and as to the further construction of said plant and vessels was cancelled.

117. After such termination of said contract an audit of the cost incurred by Bethlehem Ship in the partial construction of said shipbuilding plant and of said vessels was made by the Fleet Corporation.

118. Items of actual cost within the definition of actual cost in Articles XX and XXI of said contract were incurred by Bethlehem Ship and paid by the Fleet Corporation on account of the partial construction of said shipbuilding plant amounting in the aggregate to $5,160,971.59

and on account of the partial construction of said vessels amounting in the aggregate to 375,000.00

C. G. P. H. P. B. G. W. C. R. B. E. ~~It is agreed that on account of the compensation due to Bethlehem Ship under Article XXIV of said contract of 5 per cent. of said sum of $5,160,971.59 and 7½~~

~~per cent. of said sum of $375,000, there shall be credited, as if paid to it, the sum of $10,000, being the agreed salvage value of the interest of the Fleet Corporation and/or the Government in said office building erected at Bethlehem, Pennsylvania.~~

East Coast Contract No. 465 S. C.

(Bethlehem Ship's Sixteenth Cause of Action)

See First Supplemental Stipulation of Facts, Exhibit B.

316. Massachusetts Soldiers' Bonus Tax. Under a tax law of the State of Massachusetts, Act of July 22, 1919 (General Acts 1919, Chap. 342), known as the Soldiers' Bonus Tax Law, Bethlehem Ship paid a tax to said State assessed against it in connection with its operation of the Fore River plant. Bethlehem Ship contends that the portion of the tax so paid properly allocated to the vessels then under construction at said plant, under the contracts therefor executed by the Fleet Corporation hereinbefore referred to, constitutes a part of the cost of construction of such vessels within the meaning of Article XVII of each said contract. If such contention of Bethlehem Ship be correct then the portion of the amount of the tax so paid properly allocated to said vessels amounts in the aggregate to $6,025.40, which aggregate amount is allocated to the respective contracts above in this paragraph referred to in the following amounts:

Contract	*Portion of Tax Properly Allocated*
183 S. C.	$3,012.70
299 S. C.	3,012.70

The Fleet Corporation and the Government contend, however, that no part of the tax paid under said Soldiers' Bonus Tax Law can properly be included in cost under the definition of actual cost contained in Article XVII of said respective contracts.

318. This stipulation of facts may be used by either party, subject to objections as to the relevancy of any parts thereof in any or all of the causes above entitled or in the action now pending in the District Court of the United States for the Southern District of New York between Bethlehem Ship as plaintiff and the Fleet Corporation as defendant or in any subsequent proceeding which may be brought by Bethlehem Ship, Bethlehem Steel Company, Fore River or Union to enforce the claims herein referred to or any of them.

Dated April 8th, 1926.

THE UNITED STATES OF AMERICA AND
UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION,

by HENRY P. BROWN
Special Assistant to the
Attorney General.
GEORGE W. COLES
United States Attorney for
the Eastern District of
Pennsylvania.
CHAUNCEY G. PARKER
General Counsel for United

States Shipping Board Emergency Fleet Corporation.

BETHLEHEM STEEL CORPORATION
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BETHLEHEM STEEL COMPANY
FORE RIVER SHIPBUILDING CORPORATION and
UNION IRON WORKS COMPANY
by

CHARLES SINKLER and RALPH B. EVANS
Solicitors and Attorneys

CRAVATH, HENDERSON & DE GERSDORFF
Counsel.

EXHIBIT E

Exhibit E is the same as Exhibit G109 shown elsewhere in this transcript.

EXHIBIT F

Exhibit F is the same as Exhibit B29 shown elsewhere in this transcript.

EXHIBIT G

Exhibit G is the same as Exhibit G107 shown elsewhere in this transcript.

EXHIBIT H

Exhibit H is the same as Exhibit B30 shown elsewhere in this transcript.

EXHIBIT I

Exhibit I is the same as Exhibit G125 shown elsewhere in this transcript.

EXHIBIT J

Exhibit J is the same as Exhibit G127 shown elsewhere in this transcript.

EXHIBIT K

Exhibit K is the same as Exhibit B14 shown elsewhere in this transcript.

EXHIBIT L

Exhibit L is the same as Exhibit G132 shown elsewhere in this transcript.

EXHIBIT M

Exhibit M is the same as Exhibit G134 shown elsewhere in this transcript.

EXHIBIT N

Exhibit N is the same as Exhibit G135 shown elsewhere in this transcript.

EXHIBIT B

DISTRICT COURT OF THE UNITED STATES
Eastern District of Pennsylvania

The United States of America,
Complainant,
against
Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

In Equity, No. 3315 March Term, 1925

Bethlehem Shipbuilding Corporation, Ltd.,
Plaintiff,
against
United States Shipping Board Emergency Fleet Corporation,
Defendant.

At Law, No. 11970 December Sessions, 1925

FIRST SUPPLEMENTAL STIPULATION OF FACTS

The United States of America is herein called the Government; United States Shipping Board Emergency Fleet Corporation, the Fleet Corporation;

and Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Ship.

Under date of July 15, 1918, a contract, known as Contract No. 465 S. C., covering the construction at the Sparrows Point plant of six troop ships, denominated by the Fleet Corporation as Hulls numbers 2505 to 2510, inclusive, was executed and delivered, a copy of which contract subject to correction upon comparison with the original thereof, is Exhibit 22 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 16 annexed to the statement in the action second above entitled.

At the time of entering into the stipulation of facts between the parties hereto dated April 8th, 1926, entitled in the above-named causes and three other causes pending in the same court, the parties hereto were not in agreement concerning the net cost of changes made in the construction of the three vessels completed under said contract and for that reason said stipulation did not contain complete figures showing the amounts by which the estimated cost of said vessels is to be increased in accordance with the provisions of Article XIX of said contract.

In amendment of and as supplemental to said stipulation of facts dated April 8th, 1926, it is hereby stipulated and agreed by and between the parties to the above-entitled causes as follows:

1. In consequence of further examination into the net cost of changes made in the construction of said vessels the parties hereto hereby agree that any controversy existing or which may have heretofore existed between them respecting the amount by which

the cost of said vessels was increased on account of increases in the rates of wages for labor paid at the direction of the Fleet Corporation arising by reason of their respective contentions concerning the schedule of wages referred to in said Article XIX as stated in paragraph 5 of said stipulation dated April 8th, 1926, is immaterial with respect to said contract No. 465 S. C. for the following reason, viz.:

That under the provisions of said Article XIX of said contract the amount by which the compensation of Bethlehem Ship might be increased on account of the difference between the actual cost of said vessels and the estimated cost or revised estimated cost provided in said Article XIX is limited as a maximum to one-half of $400,000 or $200,000 per vessel and the parties hereto are now agreed and hereby concede that the net cost of changes made in the construction of each of said vessels was such that under the provisions of said Article XIX the estimated cost of each such vessel was so far increased thereby, without adding anything thereto on account of wage increases and after allowing for changes in cost of materials and freight rates, that the revised estimated cost of each said vessel was in excess of the actual cost thereof by an amount such that the difference between the actual cost and the revised estimated cost was in excess of $400,000.

2. The statements contained in paragraphs 119 to 126 inclusive of said stipulation of facts dated April 8th, 1926, are hereby withdrawn and abrogated and the parties hereto hereby concede as follows:

3. With respect to the construction of three of said six vessels, to be constructed under said contract No. 465 S. C. viz.: Hulls numbers 2508, 2509 and 2510, said contract was terminated by the Fleet Corporation after work for the construction thereof had been begun, but remained in operation with respect to the construction of the other three vessels.

4. Bethlehem Ship completed and delivered said three vessels as combined passenger and cargo vessels with the changes mentioned in paragraph 1 hereof in accordance with the terms and provisions of said contract.

5. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said completed vessels amounting in the aggregate to $15,224,505.52
and in the partial construction of said uncompleted vessels, amounting in the aggregate to 2,888,648.70

and that upon said last named amount and any additional amount of actual cost found due to it on account of said uncompleted vessels Bethlehem Ship is entitled to a fee for profit of 7.6923 per cent. thereof.

6. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further

actual cost alleged to have been incurred by it in the construction of and on account of said completed vessels the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of said stipulation dated April 8th, 1926, and the following amount of royalty paid by it to Redington Standard Fittings Company on account of Curtis turbine engines installed in said vessel, viz.:

Portions of unclaimed straight wages set forth in said paragraph 314	$ 8.22
Amount of royalty paid on account of Curtis turbines in excess of the amount thereof included in the cost of said completed vessels conceded in paragraph 5 hereof	9,000.00

and as further actual cost alleged to have been incurred by it in the partial construction of and on account of said uncompleted vessels the following amount of royalty paid by it to Redington Standard Fittings Company on account of Curtis turbine engines furnished for said uncompleted vessels and the following amount of cost incurred on account of said vessels after September 7, 1920, viz.:

Amount of royalty paid on account of Curtis turbines in excess of the amount thereof included in the cost of uncompleted vessels conceded in paragraph 5 hereof	$ 9,000.00
Amount of cost incurred on account of said uncompleted vessels after September 7, 1920	136,238.26

The Fleet Corporation and the Government concede that, subject to the terms of said paragraph 314 of said stipulation dated April 8th, 1926, the

aforesaid apportionment of unclaimed wages referred to in said paragraph 314 is arithmetically correct as applicable to said completed vessels. The Fleet Corporation and the Government further concede that said amounts of royalty were paid on account of said completed vessels and of said uncompleted vessels, respectively, as above set forth, and that said amount of cost after September 7, 1920 was incurred on account of said uncompleted vessels but deny that said amounts of royalty paid, or either of them, are proper items of actual cost within the definition of actual cost contained in Article XVII of said contract, and further deny that said amount of cost incurred after September 7, 1920 is cost for which Bethlehem Ship was entitled to be repaid upon the cancellation by the Fleet Corporation of said uncompleted vessels.

7. The Fleet Corporation and the Government contend that on account of all the facts and reasons alleged in their pleadings in the causes above entitled, Bethlehem Ship became entitled to receive for the construction of the three completed vessels under contract No. 465 S. C. only the amounts as follows:

(a) Agreed cost exclusive of surplus materials	$15,071,907.16
(b) Profit of 10% on $15,071,907.16	1,507,190.72
(c) Value of surplus materials	152,598.36
Total	$16,731,696.24

The Fleet Corporation and the Government concede that in the event the Court should allow the items claimed by Bethlehem Ship in paragraph 6

as additional items of cost that such items should be added to the amounts shown above in this paragraph together with a profit of 10% on such additional items.

8. If, as is contended by Bethlehem Ship, Bethlehem Ship is to be paid for the construction of said three completed vessels in accordance with the provisions of said contract, then it is conceded that the amount to which it became entitled (subject to modification as hereinafter stated) is as follows:

Actual cost of said three completed vessels	$15,224,305.52
Fixed fee for profit provided in said contract (three times $320,000)	960,000.00
On account of savings accomplished in the construction of said vessels (to wit, on account of the difference between revised estimated cost as agreed in paragraph 1 hereof and actual cost)	600,000.00
Increase of fixed fee for profit on account of increase in cost due to changes from the contract plans and specifications	246,000.00
Total	$17,030,505.52

The above-mentioned amount of actual cost is to be increased in the event and to the extent that additional items of cost referred to in paragraph 6 hereof shall be found to be proper items of cost of said completed vessels.

9. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said completed vessels	$15,240,199.30
fixed fees for said completed vessels, as specified in said contract	864,000.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	Nothing
Total on account of completed vessels	$16,104,199.30
the actual cost of said uncompleted vessels	2,669,328.70
fee for partial construction of said uncompleted vessels	238,112.40
Total on account of uncompleted vessels	$2,907,441.10

10. Paragraphs 2, 3, 3-a and 318 of said stipulation of facts of April 8th, 1926, are hereby made applicable to the facts conceded in this first supplemental stipulation of facts in all respects as if the statements herein contained were contained in said stipulation of April 8th, 1926.

Dated, August 3, 1926.

THE UNITED STATES OF AMERICA and
UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION,

by

HENRY P. BROWN
Special Assistant to the Attorney General.

GEORGE W. COLES
United States Attorney for the Eastern District of Pennsylvania.
CHAUNCEY G. PARKER
General Counsel for United States Shipping Board Emergency Fleet Corporation,

BETHLEHEM STEEL CORPORATION
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BETHLEHEM STEEL COMPANY
FORE RIVER SHIPBUILDING CORPORATION and
UNION IRON WORKS COMPANY

by

CHARLES SINKLER
and
RALPH B. EVANS
Solicitors and Attorneys
CRAVATH, HENDERSON & DE GERSDORFF
Counsel.

EXHIBIT D

Bethlehem v. Fleet Corporation

MEMORANDUM OF AGREEMENT OF COUNSEL

1. Bethlehem waives all claims on requisitioned ships and the Fleet Corporation and the Government waive all claims for overpayments on requisitioned ships.

2. Bethlehem waives any claim for unpaid balance of the appropriations for plant improvements and facilities, and the Fleet Corporation and the Government waive any claim to the plant improvements and facilities, including the office building at Bethlehem, and if necessary agree to give bills of sale and deeds of conveyance vesting absolute title in Bethlehem.

3. Fleet Corporation and the Government concede one-half of Bethlehem's claim for replacing alleged defective work on the Cabrille and two other tankers, and Bethlehem agrees to accept one-half of its claim in full on that account.

4. Fleet Corporation and the Government concede one-half of Bethlehem's claim for expenses incurred after September 7, 1920, in connection with cancelled ships under contract #465, and Bethlehem agrees to accept one-half of its claim in full on this account.

5. Fleet Corporation and the Government concede the amount of Bethlehem's claim on the contract for the Curtis marine propelling equipment, and waives any claim for overpayment or off-set on that contract.

6. Bethlehem concedes that the unclaimed straight wages and unclaimed retroactive wages, including increased wages included in unclaimed straight wages, if any, are not to be charged as cost on account of contract ships.

7. The items scheduled in Exhibit "F" of the Government's Bill in Equity are settled as follows:

Material sold to shipbuilder: Bethlehem concedes this item.

Surplus steel used by shipbuilder: Bethlehem concedes $6,400; Fleet Corporation and the Government waive the balance of the claim on this item.

Unbilled material: This has been adjusted in the stipulation by increasing the cost of contract ships by that amount and increasing the credit to the Fleet Corporation or the Government for the payments on account in a like amount.

Carfare at Sparrows Point and *Idle Plant at Sparrows Point:* Bethlehem concedes these items.

Cost of Perley Morse audit: Fleet Corporation and the Government waive any claims on this item.

8. Bethlehem waives any claim for damages due to delay in completing the audit and the Fleet Corporation and the Government waive any claim for additional expenses in connection with making the audit on account of Bethlehem's alleged failure to keep proper records.

9. Bethlehem concedes interest at the rate allowed by the bank on its deposits with respect to the $8,000,000 advanced by the Fleet Corporation or the Government, the amount of the interest on this item being $132,770.91.

10. The Fleet Corporation and the Government concede that royalties paid on Curtis turbines and Massachusetts Soldiers' Bonus Tax are proper items to be charged as cost on contract ships.

EXHIBIT G-4

May 1st, 1928.

Ralph B. Evans, Esq.,
Land Title Building,
Philadelphia, Penna.

Dear Mr. Evans: Re: U. S.—Bethlehem Litigation.

As stated in our conversation with you yesterday, we would like Bethlehem to furnish us, as soon as possible, with the following:-

First: The plans, specifications and actual structural changes and extras, including eliminations for the following vessels:

FORE RIVER:

Hull 251—J. Luckenback
Hull 253—Pennsylvania
Hull 254—Virginia
Hull 255—Huergo

HARLAN PLANT:

441—B. Brewster
448—Olean

SPARROWS POINT:

158 and 159—James McGee and W. C. Teagle
164—Beatrice
165—Wall D. Munson
167—Hatteras

UNION:

16 and 17—Regulus and Dicto
130—J. W. Van Dyke

132 and 133 and 136 to 139—War Knight, War Monarch, Eagle, Tiger, Talabot, Bessa.
141—George C. Henry
140—Wilhelm Jebsen
142—War Sword

Second: A statement showing the average prices per pound and the total price per ship for all Hull steel in each of the vessels above named; the total hours of labor required to construct each of said ships; the total hours of labor required to construct each ship completed by Bethlehem during the years 1915-1917, inclusive, substantially similar to any of the foregoing ships; the average rate per hour for labor on each of the ships designated in Paragraph 1; and statement of the actual out-of-pocket cost of administrative and general expense and the actual depreciation charged to each of said ships.

Third: A statement showing the total labor, material and operating expenses for the entire work done by Bethlehem at its various shipbuilding plants for the U. S., the Fleet Corporation, or for other persons and corporations during each of the years, 1917, 1918, 1919 and 1920.

We request this information at the present time in order that the proposed hearing may not be delayed.

Very truly yours,

Joseph J. Brown.

JJB:MW

EXHIBIT G-5

June 22nd, 1928.

Mr. W. W. Robison,
Cravath and Henderson,
15 Broad Street,
New York City.

Dear Mr. Robison:

With reference to your letter of May 7th, 1928 to Mr. E. W. Geiss forwarding letter of May 1, 1928 from Mr. Joseph Brown to Mr. Ralph Evans requesting for certain vessels listed therein

1. The Average Price per lb. for all hull steel.
2. The total price per ship for all hull steel.
3. The total hours of labor to construct each of said ships.
4. The total hours of labor to construct each ship completed by Bethlehem during years 1915 to 1917 inclusive—similar to any of the foregoing ships.
5. The average rate per hour for labor on each of the ships designated.
6. Statement of actual out-of-pocket cost of Administrative and General Expense and actual Depreciation charged to each of said ships.
7. Statement showing total labor, material and operating expense for the entire work done by Bethlehem at its various shipbuilding plants for the United States, Fleet Corporation or for

other persons and corporations during each of the years 1917, 1918, 1919 and 1920.

Bethlehem has no records from which above information can be obtained. It was not the practice to maintain such records and while we have attempted to supply the information as requested it is, due to the elapsed time and the absence of records, not considered by us to be accurate nor can it be guaranteed. It has been compiled from various sources and is being submitted for what it is worth.

We beg to comment as follows:

1. *Average price per lb. for all Hull steel.*

The average price of steel was obtained in some cases from invoices still available, in other cases from purchase orders or purchase contracts and still other cases from "accounts payable distribution records" or from any other sources available.

2. *Total price per ship for all Hull steel.*

Total price per ship for all hull steel may be obtained by multiplying the average price shown in (1) by an Engineer's estimate of the steel required, which estimate is shown in the attached papers.

3. *Total hours of labor to construct each of said ships.*

Total hours of labor may be obtained by dividing for each month the direct labor expenditures, which are shown for each hull in the attached papers, by the corresponding average plant earning rate also shown. The average

plant earning rate is the rate of all of the employees in the plant with the sole exception of administrative employees.

From our knowledge it is safe to say that this rate is approximately 3% higher than would be the earning rate of direct employees only. Therefore, for the purpose of obtaining the hours it will be necessary to reduce the average rate shown by 3% of said rate before making division.

4. *Total hours of labor to construct each ship completed by Bethlehem during years* 1915 *and* 1916 *and* 1917.

Hulls 244 and 245 at Fore River are the only two hulls in addition to the list for which said information is furnished.

5. *Average rate per hour for labor on each of the ships.*

Divide total direct labor shown for each vessel by the total hours obtained in (3). This will result in an approximate average direct labor earning rate per hour for each ship. This calculation will show a figure of 38.49 for Hulls 253 and 254 as against an actual rate of 38.75 furnished Mr. Harry Brown by the Accounting Department late in 1917 when time slips, etc. from which the actual rate could be computed were still available.

(The information covered by questions one to five may be obtained from attached exhibits 1-A, 1-C and 1-D covering respectively the Fore River, Sparrows Point and Union Plants.)

6. *Statement of out-of-pocket cost of administrative and general expense and actual depreciation charged to each of said ships.*

This information was previously furnished on statement dated March 25, 1927 and can not be amplified.

7. *Statement showing total labor, material and operating expense * * * work done by Bethlehem * * * for United States, Fleet Corporation or other corporations during each of the years 1917, 1918, 1919 and 1920.*

Exhibit 2 attached reveals this information.

We call your attention to the fact that a large part of the figures furnished are estimated figures made from such records as are available.

In connection with the statement from the Union Plant regarding weight of plates and shapes and average price of same, we call your attention to the fact that the figures stated therein are to be modified as stated in the subsequent telegram from the Works Accountant of that plant dated June 6th; copy of which is enclosed.

Information from the Harlan Plant is not yet complete and will be sent to you shortly.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith.
Vice-President

Enclosures: 3 of each.

Exhibit G-6

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Statement Showing General Characteristics, Dates of Keel Laying and Delivery, Estimated Cost (where available) Actual Cost and Selling Value of Certain Merchant Vessels Delivered During Calendar Year 1917

Item	Vessels delivered January 1, 1917 to June 3, 1917														Vessels delivered August 3, 1917 to December 31, 1917					
	Fore River Plant					Union Plant	Sparrows Point Plant						Union Plant			Sparrows Point Plant			Fore River Plant	
Hull No.	251	252	253	254	255	441	448	156 & 159	164	16 & 17	127	150	152 & 158	136 to 139	141	163	167	14	142	
Name	J. Luckenbach	Rio Lero	Fresno	Virginia	Norge	S.Brewster	Clem	156-Jas.McCue 159-J.C.Tengle	Beatrice	16-Cagnino 17-Dieto	Enid	J.J.VanDyke	152-Earlnight 153-Carlsmarsh	136-Eagle 137-Tiger 138-Trident 139-Sussex	Geo.S.Henry	T.H.Rossum	Hatteras	Wm.Johnson	Van Sweet	
Keel Laid	2/19/16	4/15/16	5/18/16	6/14/16	9/29/16	12/4/15	6/29/16	156 - 3/1/16 159 - 4/27/16	6/1/16	16 - 7/28/16 17 - 11/16/16	6/16/16	6/6/16	152 - 6/25/16 153 - 9/21/16	136-6/20/16 137-10/26/16 138- 7/11/16 139- 9/27/16	11/26/16	11/7/16	5/24/17	4/11/17	1/22/17	
Delivered	1/25/17	2/14/17	6/30/17	7/22/17	6/30/17	5/12/17	6/22/17	156 - 5/27/17 159 - 7/19/17	6/2/17	16 - 5/31/17 17 - 7/28/17	6/7/17	6/7/17	152 - 8/22/17 153 - 7/9/17	136- 6/13/17 137- 6/30/17 138- 1/31/17 139- 2/16/17	6/7/17	9/20/17	12/20/17	10/6/17	8/22/17	
Type of Vessel	Cargo	Pet.Carrier	Tanker	Tanker	Tanker	Tanker	Cargo	Cargo	Cargo	Cargo	Pass.&Cargo	Tanker	Cargo	Cargo	Tanker	Cargo	Cargo	Tanker	Cargo	
Character of Vessel	2K-Shelter	2K-S Island	2K-S Island	2K-S Island	2K-S Island	2K-S Island	1K-S Island	3K-Shelter	1K-S Island	1K-S Island	-	2K-S Island	2K - Shelter	2K - Shelter	2K-S Island	1K-S Island	2K-S Island	2K-S Island	2K Shelter	
Deadweight Tonnage	12,225	8,247	9,050	9,050	4,900	8,100	4,541	14,950	5,908	5,900	10,250	10,575	11,850	11,708	10,475	8,611	7,822	10,380	11,715	
Classification	A.B.S.	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	
Estimated Cost																				
Material	$427,490.00	$278,300.00	$345,000.00	$345,000.00	$210,000.00	$266,300.00	$177,000.00	-	-	-	700,607.00	-	-	-	-	-	-	-	-	
Labor	195,548.00	180,300.00	212,000.00	212,000.00	121,000.00	199,000.00	123,350.00	-	-	-	683,821.00	-	-	-	-	-	-	-	-	
Actual Cost																				
Material	$423,625.88	$322,890.19	$288,566.48	$305,036.61	$221,390.58	$216,760.34	$166,179.56	$1,125,024.26	$226,430.99	$ 289,838.23	$ 969,783.60	$ 807,365.92	$2,161,080.46		$ 246,808.40	$ 313,232.92	$379,845.51	$ 556,804.41	$ 658,244.14	
Labor	280,981.18	220,152.84	225,621.92	225,621.20	202,459.26	221,205.25	162,444.35	902,056.91	148,437.10	507,465.70	642,842.94	284,858.44	2,151,490.88		218,606.09	258,315.43	258,756.58	218,606.09	298,687.03	
Expense (Operating)	142,279.86	112,295.13	149,825.20	149,295.00	100,790.46	229,025.02	90,725.82	452,792.62	86,620.25	137,306.06	189,077.25	71,580.64	487,691.00		68,521.47	123,694.58	121,671.71	65,521.47	64,814.15	
A & G Expense	51,416.09	39,524.37	51,825.42	51,597.77	32,048.42	49,800.00	25,176.16	149,152.64	28,590.50	80,077.85	104,501.63	54,917.78	346,815.93		54,450.04	40,580.57	45,017.45	54,450.04	41,302.97	
Depreciation	24,277.40	28,214.28	34,548.25	34,548.25	21,268.51	22,200.00	16,784.21	99,624.24	19,040.00	55,285.28	92,617.78	34,621.80	221,323.28		27,428.26	27,028.72	30,011.48	27,428.24	40,448.48	
Total	$942,628.38	$720,976.78	$930,056.07	$965,959.09	$687,554.83	$949,990.73	$661,568.30	$2,772,961.17	$509,139.15	$1,468,023.85	$2,918,683.17	$1,009,374.60	$5,316,093.11		$1,036,917.26	$ 742,377.22	$1,015,319.26	$1,036,917.26	$1,123,496.86	
Selling Price																				
Contract Price	$725,000.00	$455,000.00	$755,000.00	$755,000.00	$525,000.00	$670,000.00	$485,000.00	$2,150,000.00	$480,000.00	$1,220,000.00	$1,840,000.00	$ 900,000.00	$4,793,117.00		$1,500,000.00	$ 730,000.00	$922,500.00	$1,085,000.00	$1,[illegible],000.00	
Changes & Extras	6,828.50	10,900.00	28,842.90	150,526.80	3,678.85	61,745.97	11,999.31	45,400.80	17,401.96	24,057.60	99,706.12	38,295.00	38,096.42		10,858.78	55,570.00	48,874.27	38,760.44	23,427.80	
Wage Increase																				
Overtime paid workmen			Included in Chge.&Extras	Included in Chge.&Extras																
Overtime Co-efficient																				
Bonus Tonnage																				
Other Extras																				
Total	$731,828.50	$465,900.00	$783,842.90	$905,526.80	$528,678.85	$731,745.97	$496,999.31	$2,195,400.80	$497,401.96	$1,244,057.60	$1,939,706.12	$1,018,295.00	$4,831,213.42		$1,510,858.78	$ 785,570.00	$971,374.27	$1,123,760.44	$1,[illegible],427.80	
Hours of Labor																				
Average Rate (Earnings per pay hour)			28.75 cts.	36.75 cts.																

EXHIBIT G-7

(Copy)

Subsidiary Companies of Bethlehem Steel Corporation
Quincy, Mass.

May 29, 1928.
File Reference
ACA-32.10-349

From H. A. Brecht, Works Accountant
To F. A. Shick, Comptroller.
Subject Bethlehem v. Fleet Corporation

Reference (a) BFB-2759-C—5-21
(b) BFB-2761-C—5-22

Enclosure: (1) Copy of letter from Estimating Department showing estimated gross weights of plates and shapes

(2) Detail of Plates & Shapes Purchased

(3) Average Plant Labor Rates & Direct Labor Charges

1. Enclosures are submitted in quintuplicate as requested in reference (a).

2. Please note the comments contained in enclosure (1). We are also advised that the quantities stated for each of the vessels are relatively consistent, based on the size and type of the vessel.

3. Enclosure (2) was prepared from A/P Distribution records which we were able to locate. The weights of the material charged for in the different invoices listed in this record, appear in the left hand

margin of the sheets, indicating that somebody had at some time developed similar information or at least determined the quantities of steel charged to the vessels. In all cases the quantities shown represent the total as indicated by our A/P Distribution records with the exception of that shown for Hull 251. We were unable to find A/P Distribution Sheets showing charges to Hull 251 subsequent to December 1915. The cost ledger indicates purchased material charged in minor amounts in months following December 1915. Whether any appreciable portion of these amounts cover Plates and Shapes we cannot say. However, we feel reasonably safe in saying that the amount and value of steel shown for Hull 251 is between 95% and 100% of the total. It is possible that A/P Distribution Records subsequent to December 1915 could be located with further search, but our efforts to date have been non-productive.

4. The information contained in enclosure (3) was developed from a combination of two records maintained in memorandum form, during the period these vessels were under construction. One of these records contained a summarization of the amount of the payrolls by departments, the other record evidently was developed for use in connection with the determination of the quantity of incentive work carried on in the Yard, however, it contained the total hours by departments. We were able to obtain the total hours for the Plant from the second record, which divided into the total amount of the payroll for the Plant, taken from the first record, gave us the average plant rate indicated in enclosure (3).

5. We believe all of the information contained in the attached statements is reliable, and, so far as we

know, we have carefully followed your suggestions in the determination of the various items of information.

6. So far as we are able to determine, no regular records showing weight, price and value of hull steel, hours and rates of labor on stated hulls were ever maintained at this Plant prior to current times. However, there are indications in our records pertaining to hull steel, that information along these lines must have been developed from time to time, probably in special instances at the request of the Management. In the case of the particular hulls mentioned in this letter, the A/P Distribution Sheets indicate that the quantities of steel were entered currently with the values. Whether any reports of totals were developed from this information cannot be determined.

7. In the recollection of some of the older members of our organization, the hours and labor on specific hulls were asked for and developed at different times, but evidence of this cannot be located in the records we have been able to find. Such statements were probably prepared at the request of the different members of the operating organization and were quite likely submitted in memorandum form and no copies kept in the accounting files.

(Sgd) H. A. Brecht,
Works Accountant.

EXHIBIT G-8

Subsidiary Companies of Bethlehem Steel Corporation
Quincy, Mass.

May 25, 1928

From: H. H. Schulze
To: H. A. Brecht
Subject: Bethlehem v. Fleet Corp'n

Referring to letter dated May 21st, BFB-2759-C, from Mr. Geiss to you, there is given herewith a statement of the gross plates and shapes for the several Fore River Hulls, referred to in his letter.

These amounts were obtained from the most reliable sources available, namely, the schedules from which the material was ordered by the Hull Drawing Room and the results are as totalled by them.

Comparing the gross weights with the best available record for net weights, show the reasonable wasteage and, therefore, the figures quoted herein can be considered as correct.

Statement of the gross plates and shapes for Job 12 or its equivalent is:

Hull			
253 & 254 each	5,198,420	2,124,018	7,322,438
251	5,594,848	2,231,936	7,826,784
255	2,812,278	1,133,071	3,945,349

(Signed) H. H. Schulze

EXHIBIT G-9

DETAIL OF PLATES AND SHAPES PURCHASED
Hulls 251, 253, 254, 255

Month	Hull 251 Weight	Hull 251 Average Price	Hull 251 Amount	Hull 253 Weight	Hull 253 Average Price	Hull 253 Amount	Hull 254 Weight	Hull 254 Average Price	Hull 254 Amount	Hull 255 Weight	Hull 255 Average Price	Hull 255 Amount
1915												
August	2,032,119		26,833.44									
Sept.	4,703,987		60,661.11									
Oct.	1,234,402		16,966.93									
Nov.	459,034		6,859.03	61,763		946.91	56,471		772.33			
Dec.	87,673		940.98	90,941		1,250.14	90,931		1,250.14			
1916												
Jan.				821,199		13,918.20	881,198		18,918.20	75,436		1,131.37
Feb.				1,796,408		24,897.25	1,796,946		34,896.73	279,824		4,114.03
March				2,313,933		32,384.75	2,312,536		32,379.35	178,772		2,628.93
April				1,435,535		20,603.49	1,453,525		20,802.61	565,137		9,077.75
May				637,194		12,389.46	638,201		12,389.55	2,295,979		37,471.94
June				217,536		4,337.55	217,536		4,537.51	738,109		11,982.53
July				168,608		3,390.34	168,609		3,390.58	59,352		973.14
August				57,393		1,156.85	57,391		1,155.87	52,200		845.25
Sept.				95		1.30	95		1.39	20,633		334.42
Oct.				39,295		972.65	39,295		972.65			
Nov.				785		10.71	785		10.70			
	8,518,015	.0132	112,061.49	7,638,685	.0151	115,459.60	7,633,519	.0151	115,277.31	4,265,442	.0161	68,553.36

EXHIBIT G-10

May 28, 1928

AVERAGE PLANT LABOR RATES AND DIRECT LABOR CHARGES

Hulls 244-5, 251, 253, 254, 255

Month	Plant Labor Rates	Hull 244-5	Hull 251	Hull 253	Hull 254	Hull 255
Feb. 1915	.316258	1,986.41				
Mar.	.315093	5,783.35				
Apr.	.318528	11,435.17				
May	.317424	18,704.10				
June	.320473	23,152.05				
July	.319688	38,686.78	1,229.66			
Aug.	.318895	38,666.89	796.26			
Sept.	.322245	53,915.71	1,136.05	344.53	344.53	
Oct.	.322365	50,731.63	1,168.72	277.54	377.54	
Nov.	.324030	54,129.47	1,595.85	441.62	441.63	73.84
Dec.	.327499	67,127.71	2,456.47	1,461.84	1,461.83	1,601.61
Jan. 1916	.328124	52,805.44	5,272.70	1,869.69	1,869.68	1,655.22
Feb.	.331553	47,872.66	8,830.97	2,185.68	2,185.65	1,952.89
Mar.	.329914	24,839.11	8,635.76	1,833.30	1,833.30	2,530.08

Exhibit G-10

Month	Plant Labor Rates	Hull 244-5	Hull 251	Hull 253	Hull 254	Hull 255
Apr.	.332690	8,324.84	8,120.53	1,974.71	1,974.67	1,171.25
May	.342967	289.02	10,690.16	2,824.50	2,824.45	1,411.58
June	.353795	8.11	13,226.80	2,929.07	2,929.04	1,762.44
July	.360991		21,705.80	2,965.12	2,965.09	1,617.30
Aug.	.363867		36,233.83	8,187.95	8,187.95	2,952.23
Sept.	.357562		33,192.64	9,060.18	9,060.21	3,536.88
Oct.	.355968	13.19	32,454.09	9,644.14	9,644.11	7,412.75
Nov.	.361269		46,343.83	14,786.20	14,786.25	15,360.09
Dec.	.396510		24,741.89	16,839.91	16,839.90	16,250.13
Jan. 1917	.397973		21,941.81	22,259.96	22,259.88	31,032.36
Feb.	.396018		247.64	20,050.37	20,050.30	31,357.82
Mar.	.403187		103.84	20,094.19	20,094.15	46,885.24
Apr.	.399937		160.57	24,961.36	24,961.30	32,562.92
May	.411205		202.72	52,889.10	52,889.07	1,326.29
June	.419312		.80.36	65,748.58	65,748.46	6.34
July	.412517		160.68	40,586.35	40,585.20	
Aug.	.418737		200.75	1,317.03	1,317.01	
Total		498,471.64	280,931.18	325,631.92	325,631.20	202,459.26

Exhibit G-10

EXHIBIT G-11

Subsidiary Companies of Bethlehem Steel Corporation
Baltimore, Md.

June 9, 1928

From E. W. Smith, Works Accountant,
Baltimore Plant
To F. A. Shick, Comptroller.
Subject Bethlehem v. Fleet Corporation.

Reference (a) Your Letter BFB-2759-C dated May 21st. Hulls 4158 and 4159, 4163, 4164 and 4167.

(b) Your Letter BFB-2761-C dated May 22, 1928.

(c) Your Letter BFB-2670-C dated June 4, 1928.

a-1. (a) Average price per pound for all Hull steel.

(b) Total price per ship for all Hull steel.

As explained to you during our conversation relative to the above mentioned subject several weeks ago, that at the time the Bethlehem Steel Company purchased the Maryland Steel Company or at some date after said purchase it was decided not to compile Finished Cost Books in the same manner as compiled by the Maryland Steel Company, and that it was not finally decided by your office to compile certain information to be used on our Summary of Costs, until we started to construct Hulls 4201 and 4202.

We have been successful after considerable effort in locating Material Cost Summaries, which we told you during course of conversation that we thought some one had compiled without the knowledge of Home Office, but destroyed due to same not being a part of our accounting procedure. We are giving below, information requested in paragraph a-1 (a) and (b), but find that we cannot support this information with any of the original records, meaning, Accounts Payable Vouchers, Material Requisitions nor Monthly Compilations of same, which were used in compiling this record, as you no doubt know it has always been the policy of our Company to destroy the majority of our records, after reasonable period of time, before we contracted to construct Hulls for the Emergency Fleet Corporation due to lack of storage facilities.

We have discovered in comparing total amount of Job twelve as shown on these Material Cost Summaries that the following differences exist between said summaries and our Cost Ledgers, but due to them not being of any great variance as you can note, we do not think that our figures would change considerable if we were successful in identifying these amounts as to Hull steel and other materials charged to this job number.

Hull No.	Job No.	Ledger Cost	Material Summary Cost	Difference
4158-4159	12	534,402.86	536,440.26	*2,037.40*
4163	12	118,823.67	125,090.17	*6,266.50*
4164	12	97,488.81	97,488.81	
4167	12	159,201.86	137,149.54	22,052.32

Hull No.	Job No.	Gross Weight Hull Steel Plates and Shapes	Price per Ship Hull Steel (Cost Delivered)	Average Price per Pound Hull Steel
4158-4159	12	23,161,328	425,683.02	.0184

Hull No.	Job No.	Gross Weight Hull Steel Plates and Shapes	Price per Ship Hull Steel (Cost Delivered)	Average Price per Pound Hull Steel
4163	12	5,443,088	110,518.92	.0203
4164	12	3,185,937	82,033.44	.0257
4167	12	4,858,901	128,621.33	.0265

a-1. (c) Total hours of Labor Required to Construct.

(d) Average Rate Per Hour for Labor. Statement Attached.

As explained to you in previous paragraph of letter, that the compiling of the weight and value of Hull steel was not started until we secured contracts to construct Hull 4201-2, this same condition prevailed relative to hours. The construction of Hulls 4158-4159 were started in October 1915, from that date to June 30, 1916, which was during the period of Maryland Steel Company, ownership, we have been successful in accumulating labor cost from one of their ledgers now in our possession. You will also note, on our statement, Hulls 4163-4164 and 4167 show labor amounts in certain months during same period. This information was taken from same source.

In reviewing our records in an endeavor to establish plant earning rate for period October 1st, 1915 to June 30th, 1916, we find it impossible to locate pay-rolls. But we have been successful in locating in the files of the former General Manager, analysis of these pay-rolls from which we have established said rates for the months from October 1915 to December 1915, inclusive. For the months of January to May 1916, we were compelled to establish said

rates from another record of same source captioned "Productive Hours and Wages."

But were compelled for the month of February, 1916 to correct hours as shown in three of the departments due to them not comparing with monies paid. The corrected hours were established by dividing the average rate for the same department for the previous month into the monies paid. Salaries paid administrative employees have been eliminated.

We also have in our possession from October 1st, 1915 to April 30, 1916 total pay-roll earnings which compare very favorable with figures in compiling rates. This record does not show hours.

For the month of June, 1916, being unable to locate any pay-roll hours or monies we have used May 1916 rate.

In establishing monthly rates for July 1916 up to and including December 1916, due to our pay-rolls being destroyed for this period we were compelled to compile day work hours and amounts from Departmental distribution books which we have in our possession. Piece Rate Ledgers were not retained and in establishing hours to support amounts paid, which we compiled from above mentioned distribution books we were compelled to use as a base piece work hours and money shown on our Pay-Roll Summary for the month of January, 1917. Endeavoring to take into consideration the same percentages of increase departmentally as day workers rates reflect.

January, February and December 1917 rates were taken from copies of Pay-roll Summaries forwarded

from your office. March to November 1917 inclusive monthly rates were taken from records used when compiling increased labor cost on commandeered Hull, which said records being identical to Pay-roll Summaries which we cannot locate.

E. W. Smith,
Works Accountant.

EXHIBIT G-12

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BALTIMORE PLANT

Subject: Bethlehem v. Fleet Corporation

Reference: A—Mr. F. A. Shick, Comptroller's Letter BFB- 2759-C Dated May 21st.
B—Mr. F. A. Shick, Comptroller's Letter BFB-2761-C Dated May 22nd.
C—Mr. F. A. Shick, Comptroller's Letter BFB- 2670-C Dated June 4th.

A-1 C & D Direct Labor cost by months

			Hull Nos.							
		Monthly	4158-9		4163		4164		4167	
Year	*Month*	*Rate*	*Amount*	*Hours*	*Amount*	*Hours*	*Amount*	*Hours*	*Amount*	*Hours*
1915	October	.2391	50.73							
"	November	.2394	1,146.81							
"	December	.2437	1,834.36							
1916	January	.2414	2,363.61				156.55			
"	February	.2618	6,271.18				666.25			
"	March	.2613	11,065.32				1,166.32			
"	April	.2657	14,967.20		83.02		677.08			
"	May	.2698	29,489.38		486.18		1,813.11			
"	June	.2698	35,720.79		246.54		2,322.47			
"	July	.2855	32,418.19		616.91		2,430.92		506.28	

Exhibit G-12

1743

			Hull Nos. 4158-9		4163		4164		4167	
Year	Month	Monthly Rate	Amount	Hours	Amount	Hours	Amount	Hours	Amount	Hours
"	August	.2817	48,164.39		1,078.53		4,269.05		291.79	
"	September	.2883	42,018.74		1,173.63		6,821.71		709.61	
"	October	.2853	87,020.82		2,485.64		13,813.58		797.40	
"	November	.2905	90,439.04		4,574.14		12,849.39		171.73	
"	December	.3124	68,123.32		5,411.75		10,922.27		227.82	
1917	January	.3096	92,232.57		10,706.55		22,870.03		621.11	
"	February	.3120	70,990.70		9,368.45		32,522.02		1,357.26	
"	March	.3105	99,144.55		11,832.02		49,048.92		3,448.54	
"	April	.3164	64,915.18		16,847.63		1,054.36		3,136.29	
"	May	.3355	59,834.53		23,998.60		53.07		5,435.49	
"	June	.3355	41,222.15		24,696.73				6,851.38	
"	July	.3373	2,568.33		35,908.12				8,532.85	
"	August	.3524			43,743.65				15,414.99	
"	September	.3635	53.02		39,714.88				26,491.47	
"	October	.3732			162.70				50,763.02	
"	November	.3810			155.38				79,402.36	
"	December	.3984			34.38				34,596.19	
	Total		902,056.91		233,325.43		163,457.10		238,755.58	

EXHIBIT G-13

June 1, 1928,
ACA-2300.

J. Sidney Lewis, Works Accountant.
F. A. Shick, Comptroller.
Bethlehem v. Fleet Corporation.

Reference: Your letter BFB-2759-C of 5-21-28
" " BFB-2761-C of 5-22-28

Enclosures: Exhibit A—Direct Labor Cost on Hulls by months and Plant Earning Rates for each month.
" B—Comparison of weights of Plates and Shapes and average price of same.

Copy of letter from U. S. Steel Products Co. to Purchasing Agent, Union Iron Works Co. supporting statement on Exhibit B—Hull 16.
Copy of letter from Purchasing Agent, Union Iron Works Co. Potrero to Purchasing Agent, Union Iron Works Co., Alameda. Supporting Statement on Exhibit B—Hull 16.

I am enclosing herewith the information requested in Exhibit A, showing Direct Labor Costs by months and Plant Earning Rates for each month we were unable to find any records compiled at the time of construction giving the hours and rates of labor, therefore, we have obtained the necessary figures from various sources, and believe them to be absolutely correct.

No definite figures are obtainable as to the weights and average price of Plates & Shapes, but on Exhibit B, we have done the best we can with the records available and on this statement we show the source of information for all our figures. We checked these with our Hull Drafting Department and believe them to be as nearly correct as it is possible to be considering the incomplete records at our command.

J. S. Lewis,
Works Accountant.

Encl.

EXHIBIT G-14

Nov. 9th, 1916

Mr. H. Speed,
Purchasing Agent,
Alameda Branch

Dear Sir:—

Herewith find bill in duplicate for the U. S. Steel Products Company dated October 16th, their Invoice No. D-10263 in amount of $1003.84, being the extra cost of the excess tonnage supplied by them for Hull No. 16 as required by our revised order list as compared with the original order placed by the United Engineering Works through the Pacific Hardware & Steel Company. We have checked over the weights carefully and find the same to be approximately correct. The charge of $6.00 per ton for the excess tonnage is also correct—You may, therefore, pass

this bill to their credit, charging the same to your order for the material for Hull #16.

Yours truly,
Union Iron Works Co.,
By
Purchasing Agent.

EXHIBIT G-15

United States Steel Products Co.
San Francisco, Cal.

Mar. 23, 1916

Mr. M. P. Geirrine, Purchasing Agent,
Union Iron Works Co.,
San Francisco, Calif.

Dear Sir:

Referring to conversation with you regarding revised specifications which you gave us for Hull No. 16 for which order was originally given us by Pacific Hardware & Steel Co., the revised specifications called for a tonnage heavier than that provided for on the list originally furnished us by Pacific Hardware & Steel Co. In order to provide for the price on this excess tonnage, we will, as arranged with you, bill the entire tonnage to Pacific Hardware & Steel Co., at price originally agreed upon. We will charge one of your contracts with the excess tonnage and will render you a bill for the difference between the price at which material was originally sold and contract price against which the excess tonnage is applied. This we understand is entirely satisfactory to you.

Yours truly,
United States Steel Product Company
Richard B. Carr,
Mgr. of Sales.

EXHIBIT G-16

DIRECT LABOR COST ON HULLS BY MONTHS
AND
PLANT EARNING RATES FOR EACH MONTH

Exhibit A

Year	Month	Plant Rate	Hulls 16 & 17	Hull 130	Hulls 132-3-6-7-8-9	Hulls 140 & 141	Hull 142
1915	December	.3899		80.29	112.95		
1916	January	.3910		201.03	2,952.30	20.74	
	February	.3822		687.76	4,407.51	186.84	
	March	.3757	1,699.16	802.53	5,931.05	252.63	
	April	.3907	1,338.48	2,086.91	7,542.33	845.55	
	May	.3902	2,365.08	4,439.80	8,791.72	692.58	
	June	.3896	10,390.67	7,941.04	634.30	719.12	
	July	.3858	14,137.14	17,561.81	54,443.06	748.39	107.81
	August	.3942	16,158.84	29,407.70	69,659.23	1,271.51	155.28
	September	.3906	21,274.29	44,083.53	95,862.96	1,370.83	76.94
	October	.3966	28,147.67	74,023.29	182,255.89	1,761.09	197.58
	November	.3924	30,434.62	60,184.60	179,341.22	3,633.79	940.69
	December	.3847	42,615.59	53,473.72	267,624.40	14,144.46	2,760.53
1917	January	.3937	46,011.13	31,905.49	252,766.71	15,085.39	6,965.21

Year	Month	Plant Rate	Hulls 16 & 17	Hull 130	Hulls 132-3-6-7-8-9	Hulls 140 & 141	Hull 142
	February	4015	55,868.38	9,215.08	221,326.63	45,732.77	12,573.04
	March	4015	52,199.61	765.85	239,665.80	78,518.56	13,699.36
	April	4104	56,499.57		270,267.70	98,094.62	46,657.21
	May	4246	52,943.29		141,439.26	91,106.58	65,522.72
	June	4196	38,848.63		80,383.19	76,796.43	77,782.88
	July	4355	34,398.37		28,212.48	85,687.07	59,266.18
	August	4273	2,062.31			66,824.83	11,951.60
	September	4541	15.65			29,024.13	
	October	4864	52.50			5,396.45	
	November	4879				6,724.83	
	December	6058	5.87			404.85	
1918	January	6024	18.84			538.66	
	February	6038				108.03	
	March	5050				108.04	
	April	6039				171.30	
	June	6072				42.00	
			307,465.70	336,858.43	2,131,490.68	637,012.17	298,657.03

Exhibit G-16

1749

EXHIBIT G-17

WESTERN UNION

(Copy)

N13 413 NL 1-146-San Francisco, Calif June 6

E W GEISS

BETHLEHEM SHIPBUILDING CORPORATION LTD BETHLEHEM PENN

EIGHTY FOUR YOUR FOURTEEN PRICES SHOWN DO NOT INCLUDE FREIGHT ON ANY HULLS STOP ALL STEEL SOLD FOB MILL OR PITTSBURG STOP ADD FOR FREIGHT PER ONE HUNDRED POUNDS HULLS SIXTEEN AND SEVENTEEN SIXTY FIVE CENTS STOP HULL ONE THIRTY-THREE THIRTY NINE THOUSAND FOUR FORTY POUNDS AT SIXTY FIVE CENTS BALANCE AT SEVENTY FIVE CENTS STOP HULL ONE THIRTY TWO TO ONE THIRTY NINE THIRTY THREE MILLION ONE SEVENTY SIX THOUSAND FIVE HUNDRED FIFTY POUNDS AT SIXTY FIVE CENTS BALANCE SEVENTY FIVE CENTS STOP HULLS ONE FORTY AND FORTY ONE NINE MILLION NINE HUNDRED THREE THOUSAND FIVE FORTY EIGHT POUNDS AT SEVENTY FIVE CENTS BALANCE SIXTY FIVE CENTS STOP HULL ONE FORTY TWO ALL SEVENTY FIVE CENTS STOP EXPLANATION ABOVE RATES STEEL MOVED FROM DIFFERENT EASTERN POINTS AND ALSO RATES WERE CHANGED DURING PERIOD OF SHIPMENT STOP STEEL OR-

DERS FOR HULL ONE THIRTY WERE PLACED WITH U S STEEL NOVEMBER AND DECEMBER NINETEEN FIFTEEN AT PRICE ON DOLLAR FORTY BASE PER ONE HUNDRED POUNDS AND SMALL ADDITIONAL ORDER IN MARCH NINETEEN SIXTEEN AT PRICE ONE DOLLAR EIGHTY BASE PER ONE HUNDRED POUNDS STOP STEEL ORDERS FOR HULL SEVENTEEN WERE NOT PLACED WITH U S STEEL UNTIL FEBRUARY NINETEEN SIXTEEN AND PLACED AT ONE DOLLAR EIGHTY BASE AS THE EARLIER U S STEEL CONTRACTS HAD BEEN FILLED WHEN THESE ORDERS WERE PLACED STOP THIS WILL EXPLAIN DIFFERENCE IN PRICE OF HULLS SEVENTEEN AND ONE THIRTY STOP ORDERS FOR HULL SIXTEEN STEEL HAD ALREADY BEEN PLACED BY UNITED ENGINEERING COMPANY WITH PACIFIC HARDWARE COMPANY BEFORE BETHLEHEM TOOK OVER PLANT STOP CHANGE AVERAGE RATE ON THIS HULL TO READ ONE DOLLAR SEVENTY THREE WEIGHT REMAINS SAME STOP EXPLAINING CHANGE WOULD SAY WE HAVE DISCOVERED SOME DUPLICATE INVOICES FROM PACIFIC HARDWARE IN OLD CORRESPONDENCE FILE WHICH SHOWS THAT PRICE OF STEEL AS BILLED US BY ABOVE FIRM WAS ONE DOLLAR SIXTY FIVE BASE PER ONE HUNDRED POUNDS FOB PITTSBURGH WHICH WITH EXTRAS WOULD MAKE AVERAGE PRICE ONE DOLLAR SEVENTY THREE STOP HULL ONE THIRTY USE LEDGER COST STOP BALANCE OF HULLS OPTIONAL WITH YOU TO USE EITHER PUR

CHASE ORDER INVOICE OR DRAFTING ROOM COLUMNS STOP WEIGHTS ON DRAFTING COLUMN INCLUDE PLATES AND SHAPES SUPPLIED FROM OUR LOCAL STOCK AND BELIEVE THIS IS MOST CORRECT ESTIMATE OF STEEL ACTUALLY CHARGED TO HULL EQUIVALENT TO JOB TWELVE STOP ARRIVED THIS MORNING AND HAVE GONE INTO THIS MATTER AND CANNOT SEE THAT WE CAN POSSIBLY GIVE YOU ANY FURTHER INFORMATION STOP MY MEN HAVE WORKED VERY HARD ON IT

J. SIDNEY LEWIS.

EXHIBIT G-18

COMPARISON OF WEIGHTS OF PLATES AND SHAPES AND AVERAGE PRICE OF SAME

	From Cost Ledger		*From Purchase Orders*		*From Invoices Obtainable*		EXHIBIT B
	Weight in Lbs.	*Average Rate*	*Weight in Lbs.*	*Average Rate*	*Weight in Lbs.*	*Average Rate*	*Weights from Hull Draft—Room*
Hull 17	Books cannot be found		Purchase orders cannot be found		4,355,072	1.864	*Weight in Lbs.*
Hull 16	Books cannot be found		Purchase orders cannot be found		4,355,072	1.587	4,321,091
			(*Note*—The only orders which can be found on these Hulls are for a very small quantity of additional plates and shapes for Hull 17 placed at a price of 2.60 base plates and 2.40 base shapes.		From copies of correspondence attached you will note that Pacific Hdwe. & Steel Co. must have taken the order for plates and shapes. Hull 16 at a price of $1.50 per 100 lbs. base which is $6.00 per ton less than we had to pay for the excess tonnage. No invoices can be found for Hull 16.		4,321,091
Hull 130	7,728,757	1.477	7,758,561	1.475	6,927,169	1.50	7,769,600
					(*Note*—All Invoices evidently cannot be found as weights obtained do not agree with Cost Ledger and Purchase Orders.		
Hulls 132-3-6-7-8-9	Alameda Books cannot be found Cost kept at Potrero shows only a small portion of cost.		40,204,203 (*Note*—This weight is lower by 1,794,014 lbs. than the weight furnished by us in answer to your telegram. We find that a Purchase order showing the above weight of shapes ordered for Hull 139 was not intended to be used on that Hull and above shapes were used on another Hull. Also weight shown above would not include liners and does not include weight of plates and shapes which were used in Hull and supplied from our own stock.	1.67	39,672,701	1.69	43,142,410 (*Note*—This weight includes 834,000 lbs. liners which were not included in B/M's. but were evidently ordered later, and do not show in our weight of plates and shapes from Purchase Orders. The balance left over would represent material supplied from our own stock.
Hulls 140-141	13,132,882 This figure is evidently incorrect. There is a posting of 525,985 lbs. plates $66,426.68. We believe this should read 3,525,985 lbs., $66,426.68, which would raise the weight up to 16,132,882 lbs. The books also show that job was credited with plates and shapes left over when vessels were completed in the amount of $61,778.99. Vo. 134, but this voucher does not show weight of plates and shapes credited.	2.4049	15,775,698	2.21	15,549,897	2.23	15,539,200
Hull 142	Books cannot be found		6,691,240 (*Note*—This weight would not include liners and does not include weight of plates and shapes which were used on hull and taken from our own stock.	3.19	6,691,240	3.244	7,190,400 (*Note*—This weight includes 139,000 lbs. liners which were not included in B/M's and were evidently ordered later and do not show in our weight of plates and shapes from Purchase Orders. The balance left over would represent material taken from our stock.

EXHIBIT G-19

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

New York, N. Y. Oct. 25, 1928.

Mr. W. W. Robison,
15 Broad Street,
New York City.

Dear Mr. Robison:

With reference to your letter of October 11th, 1928 addressed to Mr. Geiss, of which a copy was sent me, calling our attention to a question raised by representatives of the Fleet Corporation as to a discrepancy between the quantity of plates and shapes for JOB 12 for Hulls 253-4 mentioned in a memorandum from Mr. Schulze to Mr. Brecht on May 25, 1928, and the quantity appearing in a statement "DETAIL OF PLATES AND SHAPES PURCHASED" dated May 28th, 1928 which was Exhibit 1-A attached to my letter of June 22nd, 1928 and also Exhibit "E" attached to my letter of August 8th, 1928, we beg to state that an analysis of this subject shows that the weights given in Mr. Schulze' report to Mr. Brecht are the estimated weights taken from the schedules prepared in the drafting room whereas the weights contained in Exhibit "E", attached to my letter of August 8, 1928, is the gross invoiced weights of plates and shapes for JOB 12 as taken from the records. This gross weight includes plates and shapes ordered for other miscellaneous purposes and which at the time they are ordered are charged into JOB 12 and ultimately

credited to job 12 as they are charged out against specific jobs.

We find that this correction, in the case of Hulls 253-4, amounted to 326,113 lbs. Deducting this from the 15,272,014 lbs. gross weight leaves a remainder of 14,945,901 lbs. as compared with the calculated schedule weight of 14,644,876 lbs. or a difference of 301,025 lbs. or about 2% of the estimated weight. This can be easily accounted for by the mill tolerances.

As a result of the above, the figures for Hulls 253-4 on Exhibit "E" should be modified. Also we find on this same exhibit in rechecking Hulls 244-5 and 268-9 a few discrepancies which we have corrected. These hulls have been also corrected for credits similar to that on Hulls 253-4 for plates and shapes transferred to other accounts.

A revised sheet, exhibit "E", dated October 25, 1928 is hereto attached.

There has been omitted from this sheet, figures for Hulls 1376-1381. The break-down for these Hulls slightly modifies the old Exhibit "E" and new exhibit is attached to my letter of this date which answers your letter of September 25, 1928.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

H. G. Smith,
Vice President.

EXHIBIT G-20

Revised Exhibit "E"

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
Fore River Plant

COMPARATIVE COST OF JOB 12 MATERIALS,
Hulls 244-5, Hulls 253-4 and 268-9

	244-5 Weight		Amount
Plates and Shapes	14,785,433#	.0130	$193,115.39
All other Material			43,955.33
Total Material			$237,070.72

	253-4 Weight		Amount
Plates and Shapes	14,945,901#	.0152	$226,832.19
All other Material			78,919.05
Total Material			$305,751.24

	268-9 Weight		Amount
Plates and Shapes	14,764,471#	.0226	$335,087.31
All other Material			62,724.69
Total Material			$397,812.00

Quincy, Mass 8/2/28.
Revised 10/25/28

EXHIBIT G-21

July 6th, 1928

Ralph B. Evans, Esquire,
1335 Land Title Building,
Philadelphia, Penna.

Re: U. S. — Bethlehem Litigation.

Dear Mr. Evans:

In pursuance of our conversation with you of yesterday, the Government would like to have the following information if Bethlehem is willing to furnish the same at this time:

1. Schedule of all items included in "Job 12" with respect to Fore River Hulls 244, 245, 253, 254, 268, 269, 1376 to 1381 inclusive and Sparrows Point Hulls 158 and 159.

2. Copies of all invoices, contracts, orders, etc. relating to "Job 12" materials used in connection with the construction of the foregoing ships, excluding Hulls 1376 to 1381.

3. Statement showing the actual respective costs of steel and other materials included in "Job 12" in connection with the construction of the foregoing ships, including Hulls 1376 to 1381.

4. Copies of all contracts, agreements, options, etc. in existence December 19th, 1917 relating to materials included in "Job 12" as well as all other materials.

5. Brown's estimate as to the total cost of armed guard equipment and war zone requirements to be

furnished for tankers of 9100 and 14950 d. w. t., as well as the respective costs of labor and materials in connection therewith.

6. Brown's estimate as to the respective costs of hotel equipment and navigation outfit to be furnished for the tankers of 9100 and 14950 d. w. t.

7. Brown's estimate as to the cost of "other contingencies" relating to the construction of tankers of 9100 and 14950 d. w. t.

8. The nature of the "other contingencies" included in Brown's estimate with respect to these ships.

9. Explanation of the discrepancy between Brown's estimate as to the cost of all materials required for the construction of a tanker of 9100 d. w. t. and the actual cost of such materials with respect to Hulls 1376 to 1381 inclusive.

With respect to the depositions of Messrs. Powell and Brown, in view of their expected absence during the balance of this summer, we will postpone this matter for the present. We will appreciate it, however, if you will kindly let us know when they return from their vacations, in order that the Government may then proceed in the matter without further delay.

Very truly yours,

Joseph J. Brown.

JJB:MW

EXHIBIT G-22

COPY

Cravath, DeGersdorff, Swaine & Wood
15 Broad Street

New York, August 8, 1928.

U. S. v. Bethlehem Shipbuilding Corporation, Ltd.

Dear Mr. Frick:

With further reference to Mr. Brown's letter to Mr. Evans of July 6, requesting certain information, I send you herewith to be furnished to Mr. Brown a copy of a letter of today's date from Bethlehem Shipbuilding Corporation, Ltd., to me, together with Exhibits A, E and F referred to therein.

I am sending you under separate cover the three volumes of invoices referred to in our client's letter as Exhibits B, C and D. Exhibit C contains invoices for "Job 12 material" for hulls 253 and 254, in addition to the Carnegie invoices for plates and some shapes for those hulls, photostatic copies of which I sent you on the 2nd instant. The invoices which I am now forwarding are original records and must be returned. They are, as you will see, very voluminous and it seems to me that we should not be asked to furnish photostatic copies of them. I should think Mr. Brown's purpose in asking for them might be fully served, if he and his associates were allowed to have such access to them as they may wish at your office.

Referring to items 5, 6, 7 and 8 of Mr. Brown's letter of July 6, I would say that we are advised that no separate estimates were made of the cost

of armed guard equipment, war zone requirements, hotel equipment, navigation outfit or other contingencies, but that the cost of these was lumped in the ten per cent. (10%) allowance mentioned in previous information furnished to Mr. Brown.

With reference to Mr. Brown's request in item 9 of his letter for "explanation of the discrepancy between Brown's estimate as to the cost of all material required for the construction of the tanker of 9100 d. w. t. and the actual cost of such materials with respect to hulls 1376 to 1381, inclusive," we do not think that we should be asked to furnish information of this character or that it is information which will be of any assistance to Mr. Brown in the preparation of his case, particularly in view of the fact that if any explanation of any such discrepancy becomes material, it will be so as a matter to be shown as a part of our case rather than as any part of the Government's case.

I am enclosing an additional copy of this letter which you may furnish to Mr. Brown if you wish.

Very truly yours,

W. W. Robison.

Benjamin O. Frick, Esq.,
Messrs. Evans, Bayard & Frick,
Land Title Building,
Philadelphia, Pa.

EXHIBIT G-23

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

New York, August 8, 1928.

Mr. W. W. Robison,
Cravath, DeGersdorff, Swaine & Wood,
15 Broad Street, New York.

Dear Mr. Robison:

With reference to letter of July 6, 1928 from Mr. Ralph B. Evans in connection with information the Government desires from Bethlehem.

We are now in position to make a report to you on this subject and forward herewith certain information, all as below:

Question (1) Schedule of all items included in "Job 12" with respect to certain Fore River & Sparrows Point Hulls.

Schedule of items included in Job 12 is forwarded herewith marked Exhibit "A".

Information furnished herewith in connection with our Fore River Plant will be identical so far as Hulls 158 and 159 are concerned at our Sparrows Point Plant.

Question (2) Copies of all invoices, contracts, orders, etc. relating to "Job 12" materials used in connection with the construction of Fore River Hulls 244, 245, 253, 254, 268 & 269 and Sparrows Point Hulls 158 & 9.

We have been fortunate enough to locate most of the invoices relating to "JOB 12 MATERIAL" so far as it relates to information from our Fore River Plant. These invoices are forwarded to you in (3) separate binders, marked exhibits (B) (C) & (D). These invoices are original records and they should be returned.

Similar information for Hulls 158 and 159 at our Sparrows Point Plant is not available.

No information is furnished on contracts, orders, etc. as it was understood this would be furnished only in the event invoices were not available. In any event we are informed these can not be located except the copy of contract for steel on Hulls 244 and 245.

Question (#3) Statement showing the actual respective costs of steel and other materials included in Job 12 in connection with the construction of the foregoing ships, including Hulls 1376 to 1381.

The information requested is shown on Exhibits "E" and "F". In these statements we have grouped all material, except plates and shapes, in one group as it is difficult and practically impossible to make a correct analysis of the balance of the material.

Question (4) Copies of all contracts, agreements, options, etc. in existence December 19, 1917, relating to materials included in Job 12 as well as all other materials.

Investigation shows that we had no open contracts, agreements or options in existence December 19, 1917 relating to materials included in "JOB

12" or for any other materials which could be applied against new vessel construction.

With reference to questions 5, 6, 7, 8 and 9. We have heard from Mr. Brown, in accordance with our letter to you of yesterday, in which Mr. Brown informs us that he consulted with you on July 18th with reference to information asked for in these questions.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

H. G. Smith
Vice President.

Copy for H. Brown
E. W. Geiss

EXHIBIT G-24

Exhibit A

SCHEDULE OF STRUCTURAL ITEMS AS CHARGED ON HULLS 244-45 and 253-54, AND MERGED INTO JOB 12, HULLS 268-69 & 1376-81

Job 5—*Loft Work*

Laying down, making scrieve boards, level boards, templates and all work done in the Mold Loft.

Job 11—*Structural Castings and Forgings*

Stem—Up to the point where it is erected complete, ready for attachment of plating and framing.

Stern Post—All parts of the stern post, including

counter and other castings, and the erection of them ready for attachment of plating and framing.

Shaft Struts—All work on shaft struts, except fitting of collars or other shell connections, and except any work in connection with boring or fitting of shafting.

Stern Tubes and Castings—All work on stern tubes and castings complete, including erection ready for attachment of plating and framing, but excepting boring and fitting of shafts.

Job 13—*All Steel Structural Work*

All steel structural work proper on the vessel except foundations, casings, trunks, deck erections and joiner bulkheads. This includes all framing, longitudinal and transverse, bulkheads, decks, keel, shell, bilge and decking keels, fenders, deck girders, inner bottom, and tank tops, miscellaneous flats and floors, deck beams, deck angles, and coamings for hatches, handling of above material, pickling, and testing of water-tight compartments, rivets, S paint, and putty.

Job 17—*Foundations*

Engine and boiler foundations, miscellaneous foundations and supports for pumps, condensers, heaters, tanks, winches, boat crane, ice machine, blowers, signal and conning towers, windlass, and wood filling for above where required.

Job 35—*Casings, Trunks, and Deck Erections*

Boiler and engine hatch casings, miscellaneous trunks and ducts (including deck angles or coaming plates) ammunition hoist, built in vent, and elevator trunks, deck houses, shaft, and coal bunker tunnels,

metal work in magazine and store rooms, door screens in coal bunkers.

SCHEDULE OF STRUCTURAL ITEMS AS CHARGED ON HULLS 244-45 and 253-54, AND MERGED INTO JOB 12, HULLS 268-69 & 1376-81

Job 41—*Rudder*

Castings, forgings, filling, boring, and bushing, for installation, rudder carrier and stuffing boxes, but not including crosshead or any part of steering gear.

Job 45—*Deck Pillars and Stanchions of Pipe or Forgings*

Deck stanchions and other structural stanchions when made of pipe or forgings (if built of plates and shapes they belong under job 13.)

EXHIBIT G-25

ACCOUNTING DEPARTMENT
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
FORE RIVER PLANT

COMPARATIVE COST OF JOB 12 MATERIALS
HULLS 244-5, 253-4, 268-9, 1376, -81

	244-5			253-4			268-9		
	Weight		Amount	Weight		Amount	Weight		Amount
Plates and Shapes	14,952,381#	.0131	$195,186.85	15,272,014#	.0151	$ 230,736.91	14,567,585#	.0228	$332,718.94
All other material			41,883.87			75,014.33			65,093.06
Total material			$237,070.72			$ 305,751.24			$397,812.00

	1376-81		
	Weight		Amount
Plates and Shapes	45,407,023#	3.508	$1,592,764.42
All other material			356,774.95
Total material			$1,949,539.37

Quincy, Mass.—8-2-28

Exhibit G-25

1765

1766

Exhibit G-26

EXHIBIT G-26

Accounting Department
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BALTIMORE PLANT

Subject: Bethlehem V. Fleet Corporation
Reference: (a) Letter from Mr. F. A. Shick, Comptroller, BFB-2728-C dated July 11th.
(b) Letter from Mr. F. A. Shick, Comptroller, BFB-2781-C dated July 11th, to Mr. H. C. Brecht, Fore River Plant.

Hull No.	Date of Contract	Date Delivered	Job No. 12 Hull Steel Average Price per Pound	Total Cost	Job No. 12 Total Material Cost
4158)		3-29-17			
4159)	10-25-15	7-19-17	.0184	425,683.02	534,402.86

7-16-28

EXHIBIT G-27

June 30, 1928.

Mr. W. W. Robison,
Cravath and Henderson,
15 Broad Street,
New York City.

Dear Mr. Robison:—

With further reference to your letter of June 22nd wherein we forwarded to you certain information relative to our Fore River, Sparrows Point and Union Plants.

As stated in the last paragraph of that letter the information relative to our Harlan Plant was not yet completed. The information has now come to hand and I take pleasure in handing you herewith the data, marked exhibit 1-B.

Very truly yours,
Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith
Vice President.

EXHIBIT G-28

SUBSIDIARY COMPANIES OF BETHLEHEM STEEL CORPORATION.

Wilmington, Del. June 14th, 1928.

From G. H. Bankhard, Works Accountant, Harlan Plant,
To F. A. Stick, Comptroller
Subject Bethlehem v. Fleet Corporation
Dated May 21, 1928.

After making a thorough search, coupled with talking with the General Manager's Secretary, who

was here at that time, the writer was unable to obtain any information [illegible]ng to the procedure of accounting methods with relation to Cost keeping at this Plant.

The writer, personally, has never seen any records showing where actual weights were kept on steel applying on Hulls, other than the completed Cost Books, which were made up at that time, and am unable to find out from anyone at the Plant just how or where they were accumulated, as you know, this includes both material purchased and taken from stock.

After completing the search, we have found 99% of the Labor Distribution Books dating back to August, 1915, which were used in connection with making Payroll Summaries through this period. In some cases, as noted on the attached statement, it was necessary to make a few estimates.

The method followed with reference to your letter is herewith stated.

(a) Average price per pound for Hull steel—Owing to the inability to find the Accounts Payable Distribution during this period, it was necessary for us to go back to the Accounts Payable Vouchers, which, the writer is unable to say whether same were 100% on hand, but have taken approximately 300 invoices on each hull to arrive at an average price of hull steel. Price is delivered at the Plant.

(b) Estimated weight of hull steel—We have located the steel schedules for the hulls mentioned and it was necessary for us to calculate the schedule to arrive at the total weight of hull steel which was ordered for these particular hulls.

(c) Average rate per hour for labor—In order to arrive at the average Labor Rate at the Plant at that time, on account of the Payroll Summary not showing hours, it was necessary for us to use the Labor Distribution in making up new Payroll Summaries for the period of the construction of these ships. As stated before, it was necessary to estimate the rates in a number of cases.

(d) Direct Labor was taken from the Cost Ledger Sheets on Hulls 441, and 448, but, due to the absence of the same information on Hull 440, it was necessary to go back to the individual Journal Vouchers to build up the cost. You will find, at the bottom of the statement, that there is an amount of $1,804.80, which we were unable to locate on the Vouchers; therefore, it was necessary to make an adjustment.

G. H. Bankhard,
Works Accountant.

EXHIBIT G-29

HARLAN PLANT
DIRECT LABOR AND AVERAGE PLANT HOURLY RATE

	Hull 440 Direct Labor	Hull 441 Direct Labor	Hull 448 Direct Labor	Plant Average Hourly Rate
1915				
May	424.32			.2500*
June	1,696.31			.2500*
July	3,686.89			.2500*
August	5,141.00	111.86		.2526
September	6,283.09	177.48		.2705

	Hull 440 Direct Labor	Hull 441 Direct Labor	Hull 448 Direct Labor	Plant Average Hourly Rate
October	11,125.40	671.61		.2800*
November	11,861.37	1,440.62		.2838
December	15,159.71	2,339.75	29.64	.2809*
1916				
January	18,643.48	2,312.28	61.07	.2800*
February	21,059.18	2,450.37	101.37	.2711
March	32,694.34	3,811.72	684.79	.2800
April	24,710.20	4,975.58	1,105.23	.2768
May	16,767.93	5,462.87	1,351.97	.2740
June	27,629.78	6,253.74	2,527.57	.3095
July	1,287.96	4,356.22	2,125.30	.2938
August	366.52	7,943.61	2,988.41	.3045
September		12,927.24	7,019.25	.3141
October		15,270.59	6,437.30	.3185
November		16,286.80	5,942.13	.3244
December		18,503.93	4,760.41	.3315
1917				
January		23,773.85	5,487.31	.3085
February		18,630.82	7,061.40	.3345
March		25,645.63	14,070.61	.3486
April		22,477.32	16,122.96	.3494
May		16,413.83	31,758.28	.3599
June		13,164.73	28,100.68	.3638
July		24,780.31	24,613.39	.3714
August		17,618.89	83.40	.3817
September		5,888.46	11.88	.3851
October		5,910.78		.4030
November		14,512.96		.4218
December		7,284.12		.4278
1918				
January		387.55		.4436
February		29.59		.5216
March		12,025.52		.5298
April		237.22		.5673
May		7,325.52		.5673
Adjustment	1,804.80			
TOTAL	200,342.28	321,203.35	162,444.35	

Note— * Estimated.

EXHIBIT G-30

Harlan Plant

TOTAL WEIGHT AND COST PER POUND ON HULL STEEL ACCORDING TO PLATE AND SHAPE SCHEDULE

5/31/28

Hull No.	Pounds	Average Cost Per Pound
440	5,333,063	.01245
441	6,515,983	.01287
448	3,193,597	.01670

EXHIBIT G-31

June 19, 1928.

Cravath, DeGersdorff, Swaine & Wood,
Equitable Trust Building,
15 Broad Street, New York.
Attention: W. W. Robison

Dear Mr. Robison:

Subject: Bethlehem v. Fleet Corporation

Referring to the letter of May 24, written by Mr. Joseph J. Brown to Mr. Ralph B. Evans inquiring for the same information with respect to Hull #440 built at the Harlan Plant as has been furnished by Bethlehem with respect to other ships included in the statement prepared by it showing "general characteristics, etc." and such additional informa-

tion with respect to the same hull as is requested in their letters of May 1, 4 and 22, and inquiring also for a separate cost on hulls 132 and 133 constructed at the Union Plant, we desire to report as follows:

Information was furnished you in Mr. Smith's letter of yesterday from which Mr. Brown may obtain the price and total cost of hull steel; the hours and rate of labor for hull #440. Presumably Mr. Smith and Mr. Harry Brown are arranging to furnish you or have already done so with the other information requested for this hull in letters dated May 1, 4 and 22. Information with respect to this hull similar to that shown for other ships included in the statement showing "general characteristics, etc." is shown below:

Hull #	440
Name	Geo E. Paddleford
Keel Laid	July 1, 1915
Delivered	" 13, 1916
Type	Tanker
Character of Vessel	2 dk.—3 island
D.W.T.	7500
Classification	Lloyds
Estimated Cost	
Material	—
Labor	—
Actual Cost	
Material	$249,479.96
Labor	200,342.28
Expense (Operating)	89,876.83
A. & G. Expense	32,381.40
Depreciation	21,587.60
Total	$593,659.07

Selling Value

Contract Price	$605,000.00
Changes & Extras	4,934.20
Total	$609,934.20

Separate cost for Hulls #132 and #133 is (for two hulls):

Material	$1,057,673.56
Labor	683,640.76
Expense (Operating)	156,027.76
A & G Expense	113,840.52
Depreciation	75,893.68
	$2,087,076.28

Yours truly,

Bethlehem Shipbuilding Corporation, Ltd.,
E. W. Geiss
for Comptroller

EXHIBIT G-32

January 17, 1927.

Henry P. Brown, Esq.,
Land Title Bldg.,
Philadelphia, Pa.

Dear Mr. Brown:

I am transmitting herewith two copies of a statement outlining the information which we should like to have the Bethlehem Shipbuilding Corporation furnish in connection with the pending litigation.

The information requested is the same as was considered in the conference in your office last Friday, January 14th, 1927.

In making a request for this information I think it would be well to have it clearly understood that we shall want other information on other features of the case so that the Bethlehem officials may not think that this first request is complete and final.

You may inform the Bethlehem Shipbuilding Corporation that the information concerning the costs of vessels built by other shipbuilders is being assembled as rapidly as the work can be done with the limited force available.

Very truly yours,

Chauncey G. Parker,
General Counsel.

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1. COST OF REQUISITIONED SHIPS, AND SHIPS DELIVERED IN 1917 PRIOR TO THE REQUISITION.

The Bethlehem Shipbuilding Corporation is requested to furnish figures showing both the estimated costs on which contract prices were based, and the actual costs of construction for all ships indicated in (a) and (b) as follows:

(a) All ships delivered by the Fore River Shipbuilding Corporation, Samuel L. Moore & Sons Corporation, Harlan & Hollingsworth Corporation, Bethlehem Steel Company and Union Iron Works Company between January 1 and August 3, 1917.

(b) Hulls 268, 269, 272 and 273 at Fore River Yard; 115 and 116 at Moore Plant; 453, 454, 455 and 456, 457 and 458 at the Harlan Plant; 163, 167, 169, 170, 172, 173, 174 and 175 at the Sparrows Point Plant, and 140, 142, 143, 144, 145, 146, 147, 148, 149, 154, 162, 163, 164, 165, 166, 167, 168 and 169 at the Union Plant.

Cost figures on the foregoing ships should be detailed as follows:

Estimated Cost Used as Basis for Contract Price

(a) Estimated Cost of Material $

(b) Estimated Cost of Labor:

(1) Direct Labor $

(2) Indirect " $

Total Labor Cost $

(c) Estimated Cost of Overhead

(1) Expense (excluding A&G and Depreciation $

(2) A & G Expense $

(3) Depreciation $

Total Overhead $

(d) Estimated Profit $

Total Contract Price $

Actual Cost of Constructing Ship

(a) Cost of Material $

(b) Cost of Labor:

(1) Direct Labor $

(2) Indirect Labor $

Total Labor Cost $

(c) Cost of Overhead:

(1) Expense (excluding A&G. Depreciation	$
(2) A&G Expense	$
(3) Depreciation	$
Total Overhead	$
Total Cost of Construction	$

The number of hours of labor and average rate per hour should be shown for each ship.

In addition to the cost figures, the following additional information should be supplied for all the ships delivered between January 1 and August 3, 1917.

(a) Name and Hull No.
(b) Place of Construction
(c) Keel laying and completion dates
(d) Type of Ship (Tanker or Cargo)
(e) Character of Ship (Number of decks, etc.)
(f) Deadweight Tonnage
(g) Type of Engines & Boilers
(h) Classification
(i) Cost to Purchaser:

(1) Contract Price	$
(2) Changes and Extras	
(3) Wage Increases	
(4) Overtime Bonus paid to workmen	
(5) Overtime Coefficient	
(6) Excess Tonnage	
(7) Other Extra Costs	
Total Cost to Purchaser	$

2. COST OF TURBINES BUILT UNDER CONTRACT 4989 AND CONTRACT NO. 465

The cost of all turbines built under Contract No. 4989 and the cost of all turbines built under Contract No. 465 should be shown in the following detail:

(a) Work done directly by Bethlehem:
- (1) Material cost exclusive of reduction gears $
- (2) Labor Cost $
- (3) Overhead Cost $

Total Cost for Bethlehem Work

(b) Cost of reduction gears and other parts purchased outside $

Grand Total Cost $

Cost of spares should be shown separately.

3. ESTIMATES OF COST FOR CONTRACT SHIPS

Request is made for all figures, reports, working papers and other data used by Bethlehem Shipbuilding Corporation, Ltd. as a basis for the estimates of actual cost submitted with the proposals which resulted in Contracts numbered 177, 178, 179, 182, 183, 184, 191; 196, 226, 230, 299, 300, 301, 312, 313, 314, 340, 465 and 4989. The following information concerning the Bethlehem estimates is requested specifically:

HULL

(a) Hull Steel

(1) Estimated tons of steel

(2) Price of steel in (a) at rates prevailing when estimates were submitted

(3) Any additions for possible increase in steel prices

(4) Total estimated cost of steel for hull

(b) Hull Materials

(1) Estimated quantities of all other hull materials

(2) Price of hull materials in (e) at rates prevailing when estimates were submitted.

(3) Any additions for possible increase in material prices

(4) Total estimated cost of hull materials other than steel

(c) Hull Labor

(1) Estimated number of hours of labor on hulls

(2) Average labor rate per hour when estimates were submitted

(3) Average labor rate per hour used in estimates

(4) Total estimated cost of labor on hull

MACHINERY

(a) Estimated cost of material, (purchased complete, in parts or as raw material)

(b) Labor on Machinery

(1) Estimated number of hours of labor on machinery

(2) Average hourly labor rate when estimates were submitted

(3) Average hourly labor rate used in estimate

(4) Total estimated cost of machinery

EXPENSE

(1) Estimated Expense figured at rates prevailing when estimates were submitted.

(2) Any additions for possible increase in rates.

(3) Total estimated expense.

If possible, the estimates on all the contracts should be shown in the detail required by the usual practice of the Estimating Division of the Bethlehem Shipbuilding Corporation, as illustrated by the estimates dated June 17, 1918 for troop ships to be built at Union Plant.

PLANT INVESTMENT

Request is made for a statement showing the following:

(a) Total cost, less depreciation, of all plant facilities, shown by yards, as of December 31, 1916.

(b) Total cost of all additions to plant facilities paid for with the Bethlehem Shipbuilding Corporation's own funds, shown separately for 1917, 1918 and 1919.

(c) Total cost, less depreciation, of all plant facilities paid for with Bethlehem Shipbuilding Corporation's own funds as of December 31, 1917, December 31, 1918 and December 31, 1919.

(d) Cost of all additions to plant facilities paid for with funds advanced by the Fleet Corporation, shown separately by years.

(e) Costs of all additions to plant facilities paid for with funds advanced by the Navy Department, shown separately by years, for years 1917, 1918 and 1919, or later years if any.

USE OF PLANT FACILITIES

Request is made for a statement showing what proportion of plant facilities was used in each year from 1917 to 1922 inclusive for Fleet Corporation work, Navy work and Bethlehem's private or commercial work.

NAVY CONTRACTS

Request is made for a statement showing contracts with the Navy Department made in 1917 and 1918, time occupied in completing contracts, and other information as follows:

(a) Original estimated Basis Cost $
(1) Changes and Extras
(2) Wage Increases
(3) Increase in Material Prices
(4) Increase in freight
(5) Other increases to estimated cost

(6) Total Revised Basis Cost $

(b) Actual Cost Adjusted for Savings $

Gross Savings $

(c) Payments received from Navy:
(1) For cost of construction $
(2) For Fixed Fees
(3) For Share in Savings

Total Payment Received $

ANNUAL REPORTS

Bethlehem is requested to supply the following:

(a) Copies of the annual reports for the years 1916, 1917, 1918 and 1919 for Bethlehem Steel Corporation, Bethlehem Steel Company, Penn-Mary Company, Maryland Steel Company, Fore River Shipbuilding Corporation, Samuel L. Moore & Sons Corporation, Moore Shipbuilding Company, Harlan & Hollingsworth Corporation, Union Iron Works Company and Union Iron Works Dry Dock Company; also copy of each annual report of Bethlehem Shipbuilding Corporation from its organization to the present time.

(b) List of principal officers and lists of directors for each of the above named companies in the years 1916, 1917, 1918 and 1919.

Information requested in (b) need not be furnished if same information is included in annual reports.

STOCK AND BOND HOLDINGS BY CHARLES M. SCHWAB

Request is made for a statement showing:

(a) Total number of shares of common stock and total number of shares of preferred stock outstanding in 1917 and 1918 for each of the corporations named under the last heading above.

(b) Total number of such shares of stock held by Charles M. Schwab or for his beneficial ownership.

(c) Total bonded indebtedness outstanding

in 1917 and 1918 for each of the above named corporations.

(d) Total of such bonded indebtedness represented by bonds held by Charles M. Schwab or for his beneficial ownership.

EMPLOYMENT OF $24,000,000.00 ADVANCED BY FLEET CORPORATION AND NAVY

Request is made for a statement showing where advances of $8,000,000.00 by Fleet Corporation and $16,000,000.00 by Navy Department were deposited and other information as follows:

(a) Cash balance in account or accounts representing Bethlehem's own funds at date of receipt of first advance from the Navy Dept.

(b) Subsequent deposits by months:
  (1) Of Navy funds $
  (2) Of Fleet Corporation's funds
  (3) Of Bethlehem's own funds

(c) Withdrawals by months for cost of Navy Work $

(d) Withdrawals by months for cost of Fleet Corp. work

(e) Withdrawals by months for general business of Bethlehem exclusive of Navy and Fleet work

(f) Total bank interest received

(g) Total bank interest applicable to Navy funds

(h) Total bank interest applicable to Fleet funds

The foregoing statement should cover the period from the date of the first Navy advance to the date of repayment of the last instalment of the Fleet advance.

EXHIBIT G-33

Law Offices of
EVANS, BAYARD & FRICK

March 22, 1927.

Bethlehem Shipbuilding Corp. v. U. S. Shipping Board

Dear Mr. Brown:

Referring to Mr. Parker's letter of January 17th requesting certain information, I find that certain of the information requested is not available and certain of the information we consider irrelevant under any theory of the case.

The information which is unavailable and cannot be furnished is:

1. Estimated cost of requisition ships and ships delivered between January 1 and August 3, 1917. In the case of some of these ships there are no records of estimated cost whatever. In those cases where the estimates are available, they do not include estimated cost of overhead. We will furnish all available information under this heading.

2. Estimates of cost for contract ships. We have and will furnish the working papers used in making these estimates, but these will not show estimates of cost in detail as requested.

3. Annual reports. Neither the Bethlehem Shipbuilding Corporation nor any of its subsidiaries published an annual report for the years in question. We will, however, furnish annual reports of the Bethlehem Steel Corporation.

4. Employment of moneys advanced by Fleet Corporation and Navy.—It would be practically im-

possible to furnish this information in the form requested. We have, however, computed the bank interest allowed on the advances from the Fleet Corporation and will furnish this information.

The following information we consider irrelevant and decline to furnish it at this time unless ordered by the Court. We will, however, have the information prepared available for use if the Court should deem it material.

1. Actual cost of constructing requisition ships completed after December 31, 1917. We will, however, furnish the cost of such of the requisition ships as were completed prior to December 31, 1917.

2. Cost of turbines built under contracts 4989 and 465.

3. Navy contracts.

4. Stock and bondholders of Charles M. Schwab. In view of the admission we propose to make in our reply that Mr. Schwab was one of the largest stockholders of the Steel Corporation, we believe this information is immaterial.

Except as stated above, we will furnish all the information requested, and I expect to have this in hand within the next week.

Will you please let me know definitely when the Shipping Board will be prepared to furnish the information which we have requested.

Yours very truly,

Ralph B. Evans.

Henry P. Brown, Esq.,
1535 Land Title Bldg.,
Philadelphia, Pa.

Nov. 1917-V

NET + WAGE + 10% CONTINGENT

Exhibit C-26 1765

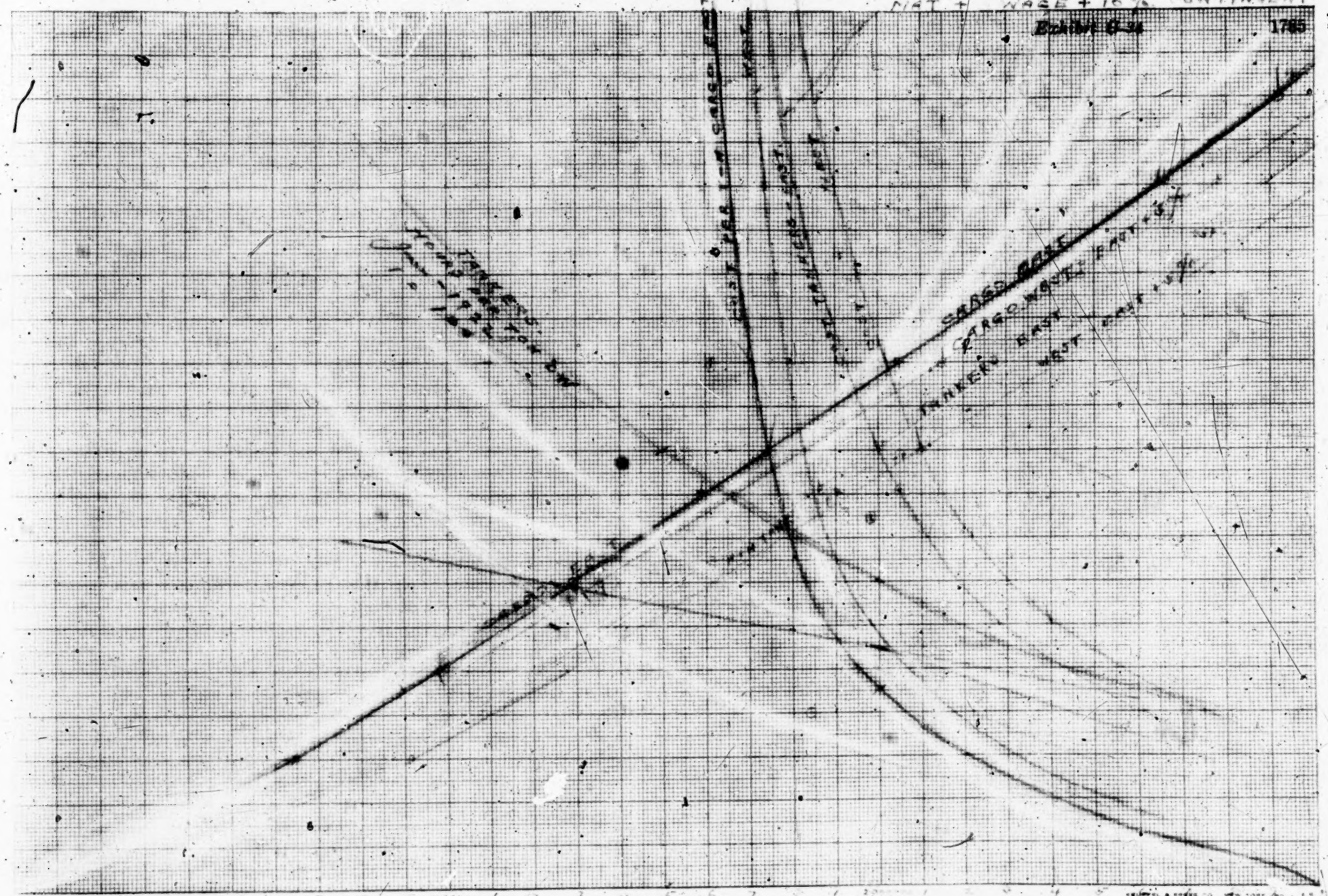

EXHIBIT G-39

June 22nd, 1928.

Mr. W. W. Robison,
Cravath and Henderson,
15 Broad Street,
New York City.

Dear Mr. Robison:

In answer to your letter of May 7th to Mr. E. W. Geiss asking for additional information in connection with certain ships which were completed in 1917. We have been in communication with our various plants and beg to report that at none of our plants has it ever been the practice to keep finished weights for individual ships. Under the circumstances the only information we can give you is the light weight of each of these vessels as taken from the "curve of form" or "deadweight and capacity scale" plans.

This information is furnished on the attached sheet marked Exhibit "A".

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith,
Vice President.

HGS*CCK
Encl.

BETHLEHEM SHIPBUILDING CORPORATION, LIMITED

Information requested under items 1, 2 and 3 of Mr. Brown's letter to Mr. Ralph Evans of M[illegible]

1928. Accompanies our letter of June 22nd to Crayath and Henderson.

	Light Weight, Gross Tons
Fore River Plant	
Hull 251	4863
Hulls 253-4	4330
Hull 255	2385
Harlan Plant	
Hull 440	3400
Hull 441	3794
Hull 448	1839
Sparrows Point Plant	
Hulls 158-9	6210
Hull 163	2764
Hull 164	2040
Hull 167	3048
Union Plant	
Hull 16	2536
Hull 17	2636
Hull 130	4233
Hulls 132-3	4080
Hulls 136-139	4213
Hull 140	4142
Hull 141	4233
Hull 142	4212

EXHIBIT G-40

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Bethlehem, Pa., August 25th, 1919.

Mr. J. L. Ackerson, Vice-President,
Emergency Fleet Corporation,
140 North Broad Street,
Philadelphia, Pa.

Dear Sir:

Subject: *Relation of Administrative Expense to Total Cost.*
Reference: Your letter of August 8th, 1919.
Enclosure: List of Accounts included in Administrative and General Expense.

We figure that the Administrative and General Expense of the Bethlehem Shipbuilding Corporation, Ltd., as shown on the two (2) attached sheets, exclusive of disallowed costs by the Emergency Fleet Corporation, is approximately one per cent (1%) of the manufacturing cost of the work in all of the ship yard plants. This average was determined by using the period January 1918 to June 1919, inclusive.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

F. A. Shick,
Comptroller.
W. A. Hauck.

Bethlehem Steel Company
and
Bethlehem Shipbuilding Corporation, Ltd.

ADMINISTRATIVE AND GENERAL EXPENSE

These accounts should include the total expense of the respective divisions.

The total of these accounts should be divided between the two Companies on the basis of Total Plant Pay Rolls and charged to accounts B-21 and C-21.

A-21. Proportion of General Expense. (Bethlehem Steel Corporation)
A-22. President.
A-24. Vice-President (H. E. L.).
A-25. Vice-President (H. S. S.).
A-35. Washington Office.
A-36. Secretary.
A-37. Treasury.
A-38. Administrative Accounting.
A-39. Purchasing.
A-40. Traffic.
A-43. General Office Building.
A-44. General.

Sub-Accounts.

A. Salaries and Wages.
B. Office Expense:
Including Printing, Stationery, Postage, Office Supplies, Furniture, Office Appliances, Premiums on Fidelity and Guaranty Bonds, Fuel, Water, and expenses not otherwise covered.
C. Telephone and Telegraph.

D. Traveling and Entertaining.
E. Advertising.
F. Rentals.
G. Miscellaneous.
H. Repairs, Renewals and Betterments.

6A

Bethlehem Shipbuilding Corporation, Ltd.

ADMINISTRATIVE AND GENERAL EXPENSE

These accounts should include the total expense of the respective divisions.

The total of these accounts should be distributed each month to the various plants on the basis of Plant Pay Roll.

C-21. Proportion of General Expense.
(See Page 6A.)
C-27. Vice-President (J. W. P.).
C-28. Manager.
C-29. Technical Manager.
C-30. Material Department.
C-31. Service Department.
C-41. Order Department.
C-43. Office Building (Brodhead and Packer Aves.).
C-44. General.

Sub-Accounts

A. Salaries and Wages.
B. Office Expense:
Including Printing, Stationery, Postage, Office Supplies, Furniture, Office Appliances, Premiums on Fidelity and Guar-

anty Bonds, Fuel, Water, and expenses not otherwise covered.
C. Telephone and Telegraph.
D. Traveling and Entertaining.
E. Advertising.
F. Rentals.
G. Miscellaneous.
H. Repairs, Renewals and Betterments.

6C
(Revised 1-1-19)

EXHIBIT G-41

UNION IRON WORKS COMPANY

San Francisco, Sept. 29, 1917.

Captain A. F. Pillsbury,
District Officer,
U. S. Shipping Board,
310 Sansome St.,
San Francisco.

Dear Sir:

Stock Freighters—Hulls Nos. 150, 151, 153 & 170

In compliance with your request for information concerning the status of these vessels, we beg to report as follows:

Hulls 150, 151 and 153 are all substantially alike and are of the following dimensions:

Length	410 ft.
Breadth	56 ft.
Molded depth	41 ft. to shelter deck

Each of them will be equipped with three Scotch boilers. Hulls Nos. 150 and 153 will have Curtis geared turbine propelling machinery developing 2600 Shaft Horsepower and Hull 151 will have a triple expansion engine, 27 x 47 x 78 - 48" stroke, developing 2600 I. H. P.

About 600 tons of structural steel for each of these vessels has been received in our yards and has practically all been fabricated in our shops ready for assembling. The balance of the structural material for these vessels is either in transit or is now being rolled at the mills and we expect complete shipment from mills will be effected within the next three or four weeks.

The triple expansion engine for Hull 151 is completely finished in our shops and is now ready for installation in the Hull when ready to receive it. The two turbine reduction sets for Hulls 150 and 153 are in process of manufacture at the works of the General Electric Co., Schenectady, and will be here in ample time for installation when their respective hulls are ready to receive them.

The boiler material for all three vessels is on hand and their construction is under way.

Auxiliary and deck machinery, pumps, anchors and chains, deck fittings and all other material required in connection with the construction and equipment of these vessels is in various stages of completion or manufacture and will be available for installation as soon as the hulls are sufficiently advanced.

It is our intention to build these vessels at our Alameda Plant.

The following vessels are now in various stages of active construction on building slips: 135, 144, 145, 146, 148, 149 and 154. The next keels to be laid will be those of Hulls 147, 150, 151 and 153 and their construction should proceed rapidly.

Hull 170: This is a single deck, shelter deck (i. e. two decks including shelter deck) freighter of the following dimensions:

Length	440 feet
Breadth	56 "
Depth	38 "

similar to Hulls Nos. 162 to 169 inclusive which we have under contract to build for the Cunard Steamship Co., except that whereas the Cunard vessels will be equipped with Curtis geared turbine propelling machine developing 3000 shaft horsepower, Hull 170 will be equipped with a Westinghouse Parsons geared turbine of the same power. This vessel will be equipped with three Scotch boilers.

The hull material for this vessel has been ordered and about 500 tons of shapes already received, but naturally little work has so far been done in the construction of this vessel as we have directed that the Hull plates for this vessel be rolled in rotation following the completion of rollings pertaining to the vessels bearing lower hull numbers. In the meantime however we are proceeding with the manufacture of certain auxiliary deck machinery, fittings etc.

Yours very truly,

John A. McGregor,
President.

EXHIBIT G-42

August 30th, 1917.

Subject: Requisitioned Vessels.

Sir:

Referring to the various correspondence on the above subject and to our verbal understanding that it is the desire of the Shipping Board to have all vessels which have been requisitioned and now being constructed at our works completed with the utmost vigor and dispatch, we beg to advise that we are giving this subject careful consideration and pending final adjustment, we should be obliged if the board would officially advise this company that it authorizes and approves the action taken by it in working overtime on these vessels and the continuance of same until completion and that such overtime, loss in efficiency and other expense incident thereto, be paid this company as an extra to the contract.

Our regular established hours of work under normal conditions are eight hours per day or forty-eight hours per week. Extra pay is made for time worked in excess of these hours.

We have received an approval from the Shipping Board covering payment (as an extra to the contract price) for overtime on vessels requisitioned from the Pan American Petroleum & Transport Company, our Hulls Nos. 268-269, but no official notification has yet been given covering payment for overtime on vessels requisitioned from the Cunard Steamship Company, our Hulls Nos. 272-273, or on

vessels requisitioned from E. F. Luckenbach, our Hulls Nos. 264-265 and 267.

Owing to the great demand for skilled labor in the shipbuilding trade which is created by the requirements for large volumes of ship tonnage, we have been compelled to hire unskilled men and train them in the performance of certain work.

We now have under investigation the amount of increased cost which will be directly caused by overtime work, the amount which will be involved due to working longer hours, due to working night shift and to the employment of unskilled labor. All these items cause an increase in cost and in connection therewith, we are preparing an estimate covering such increase in cost which when completed will be placed before the Board for its consideration and in order that as near an estimate of final cost can be made as existing conditions will permit.

Very respectfully,

Fore River Shipbuilding Corporation,

By J. W. Powell,
President.

Rear Admiral W. L. Capps, General Manager,
United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Copy to Mr. W. H. Hand, *District Officer*,
Mr. J. F. Arringdale, *Resident Inspector*.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

UNION PLANT.

Statement Showing Amount Collectible by Contractor from U.S.S.R. Emergency Fleet Corporation, as of February 29th, 1932.

Contract No.	Beth. Hull Nos.	Audited and Approved Material	Labor	Manufacturing Expense	Cost Total	AUDITED A. & G. Expense	AUDITED Depreciation	Total Cost as Audited & Approved	Fixed Fee	Audited Bethlehem Savings	Audited Bethlehem Selling Price	PAYMENTS BY U. S. F. C. Costs	Fixed Fee	Savings	Total Payments by U. S. F. C.	Balance due to Bethlehem
191 SC	180	$688,214.01	705,287.75	169,658.94	1,563,160.70	9,508.92	6,124.34	1,578,793.96	212,400.00	No detail	No detail	1,470,160.26	190,350.00	287,500.00	1,948,010.26	
	181	688,214.01	705,287.74	169,658.91	1,563,160.66	9,508.92	6,124.35	1,578,793.93	210,600.00	do	do	1,721,802.04	190,350.00	287,500.00	2,199,652.04	
	183	696,147.05	720,418.58	155,864.11	1,574,429.74	9,508.92	6,125.35	1,590,063.01	212,400.00	do	do	1,571,758.43	191,160.00	285,000.00	2,047,918.43	
	170	758,456.68	683,564.71	164,781.76	1,606,802.15	9,508.92	6,124.35	1,622,435.42	216,000.00	do	do	1,642,020.36	194,400.00	240,000.00	2,076,420.36	
Total Cont. 191SC		2,830,030.75	2,814,558.78	669,963.72	6,307,553.25	38,035.67	24,497.39	6,370,086.31	851,400.00	1,447,276.05	8,668,761.34	6,405,741.11	766,260.00	1,100,000.00	8,272,001.11	$396,760.23
239 SC	215	824,126.71	578,915.09	191,916.16	1,594,956.78	10,614.95	7,869.31	1,613,441.04	207,500.00	328,898.24	2,149,839.28	1,624,767.73	186,750.00	227,500.00	2,039,017.73	111,225.55
	216	824,126.74	578,917.89	191,916.18	1,594,956.78	10,614.96	7,869.31	1,613,441.05	207,500.00	328,898.24	2,149,839.29	1,624,767.75	186,750.00	227,500.00	2,039,017.75	111,225.54
Total Cont. 239SC		1,648,253.45	1,157,827.78	383,832.33	3,189,913.56	21,229.91	15,738.62	3,226,882.09	415,000.00	657,796.48	4,299,678.57	3,249,535.48	373,500.00	455,000.00	4,077,227.48	222,451.09
177 SC	5257	923,668.27	1,001,612.62	387,082.92	2,312,363.81	17,629.81	11,876.76	2,341,870.38	210,600.00	No detail	No detail	2,366,402.38	189,000.00	-	2,555,402.38	
	5258	853,834.97	807,095.11	265,237.63	1,926,167.71	17,629.81	11,876.76	1,955,670.28	210,600.00	do	do	1,680,747.05	189,000.00	140,407.17	2,009,780.22	
	5259	875,696.99	665,074.01	221,816.94	1,762,549.94	17,629.81	11,876.76	1,792,056.51	210,600.00	do	do	1,816,648.47	189,000.00	190,347.13	2,195,995.60	
	5260	861,879.01	672,701.39	237,208.67	1,771,789.07	17,629.81	11,876.76	1,800,895.64	210,600.00	do	do	1,825,565.78	189,000.00	186,954.97	2,201,520.75	
	5261	860,738.65	700,654.86	250,207.95	1,811,602.46	17,629.81	11,876.76	1,841,109.03	210,600.00	do	do	1,865,796.68	189,000.00	176,827.65	2,231,624.33	
	5262	854,106.23	713,969.82	254,625.35	1,822,701.40	17,629.81	11,876.76	1,852,208.17	210,600.00	do	do	1,877,877.96	189,000.00	175,676.51	2,242,554.47	
	5265	852,896.20	680,722.88	241,709.81	1,774,328.89	17,629.80	11,876.76	1,804,435.45	210,600.00	do	do	1,830,081.99	189,000.00	186,813.85	2,205,895.84	
	5264	847,273.62	705,480.53	300,135.90	1,852,898.05	17,629.80	11,876.76	1,882,404.61	210,600.00	do	do	1,908,052.09	189,000.00	167,613.80	2,264,665.89	
	5265	855,779.91	662,280.32	243,565.26	1,761,633.49	17,629.80	11,876.76	1,791,140.05	210,600.00	do	do	1,816,802.92	189,000.00	189,043.52	2,194,846.44	
	5266	868,117.94	642,551.24	259,826.15	1,740,698.33	17,629.80	11,876.76	1,790,103.89	210,600.00	do	do	1,815,764.76	189,000.00	187,318.84	2,192,083.60	
	5267	875,813.07	664,174.95	251,347.60	1,791,731.62	17,629.80	11,876.75	1,820,838.17	210,600.00	do	do	1,845,996.89	189,000.00	184,023.59	2,219,018.48	
	5268	855,781.54	682,122.22	250,866.71	1,786,790.47	17,629.80	11,876.75	1,816,297.02	210,600.00	do	do	1,841,710.02	189,000.00	195,216.42	2,225,926.44	
Total Cont. 177SC		10,373,609.40	8,598,117.95	3,163,241.09	22,134,968.44	211,557.66	142,521.10	22,489,047.20	2,820,000.00	2,780,771.03	27,789,818.23	22,791,035.96	2,268,000.00	1,980,242.47	27,039,278.39	780,539.84
201 SC	5269	898,709.03	641,101.68	246,650.42	1,786,461.13	18,156.72	13,234.86	1,817,852.71	210,600.00	No detail	No detail	1,670,237.45	189,000.00	181,723.38	2,200,961.22	
	5270	912,529.38	650,991.96	234,018.01	1,777,539.35	18,156.72	13,234.86	1,808,930.93	210,600.00	do	do	1,811,227.40	189,000.00	190,384.39	2,190,711.79	
	5271	883,857.32	662,804.20	252,870.46	1,799,231.98	18,156.72	13,234.86	1,830,623.56	210,600.00	do	do	1,873,027.86	189,000.00	190,202.94	2,212,230.80	
	5272	937,528.59	531,296.17	204,513.59	1,673,338.35	18,156.72	13,234.86	1,704,729.93	210,600.00	do	do	1,703,024.17	189,000.00	175,000.00	2,067,024.17	
	5273	904,782.77	471,632.22	184,945.30	1,561,387.29	18,156.72	13,234.86	1,592,748.87	210,600.00	do	do	1,599,334.35	189,000.00	175,000.00	1,963,734.35	
	5274	929,756.01	421,874.53	229,311.40	1,580,942.68	18,156.72	13,234.86	1,612,034.06	210,600.00	do	do	1,597,870.96	189,000.00	175,000.00	1,961,870.96	
	5275	820,269.78	583,998.20	298,033.32	1,702,271.30	18,156.73	13,234.85	1,733,662.88	207,500.00	do	do	1,735,917.67	186,750.00	196,382.31	2,119,099.98	
	5276	836,128.89	844,476.01	283,008.81	1,433,613.71	18,156.73	13,234.85	1,465,005.29	207,500.00	do	do	1,657,670.96	186,750.00	220,379.94	2,064,762.90	
	5277	818,945.58	506,847.25	236,141.16	1,560,933.99	18,156.73	13,234.85	1,592,325.57	207,500.00	do	do	1,599,856.75	186,750.00	240,694.14	2,017,298.89	
Total Cont. 201-SC		7,942,507.35	4,994,722.22	2,148,100.01	15,085,389.58	163,410.51	119,113.70	15,367,913.79	1,892,800.00	2,577,565.31	19,827,979.10	15,358,279.45	1,694,250.00	1,744,757.67	18,797,287.01	1,030,692.08
TOTAL ALL CONTS.		$22,794,400.95	17565,226.73	6,350,197.15	44,717,824.83	434,233.75	301,870.81	47,453,929.79	7,868,900.00	7,463,407.85	40,786,237.24	47,803,784.00	5,102,017.00	5,280,000.00	58,185,794.00	2,400,443.84

EXHIBIT G-96

UNIÓN IRON WORKS COMPANY

New York, October 26th, 1917.

Admiral W. L. Capps, General Manager
United States Shipping Board Emergency Fleet Corporation
Washington, D. C.

Dear Sir:

We offer to enter into a contract with your Corporation to build, equip and deliver at our Works at San Francisco and/or Alameda, California, three (3) Single Screw Shelter Deck Cargo Steamers (our Hulls #150, 151 and 153), of the following general dimensions, viz:

Length between perpendiculars	410′ 0″
Breadth moulded	56′ 0″
Depth moulded to upper deck	32′ 0″
Depth moulded to shelter deck	41′ 0″

Two of the vessels will have for propelling machinery Curtiss reduction geared turbines of about 2600 s. h. p., built by the General Electric Company, and one vessel will be equipped with a triple expansion engine of the same power built in our own shops. Each vessel will be equipped with three (3) single ended, 3-furnace, Scotch boilers, also built in our own shops, and fitted to burn oil fuel.

These vessels are on the longitudinal (Isherwood) framing system and are designed for a deadweight carrying capacity of 11,700 to 11,800 tons, including cargo, fuel, water and stores, on a maximum mean draft of 30′ 6″. Sea speed loaded 10½ knots.

Complete plans and detailed specifications of hull, machinery and equipment will be submitted.

Delivery: First vessel on or before June 30, 1918: second vessel on or before July 15, 1918 and the third vessel on or before July 31, 1918.

Penalty and Premium: We are agreeable that the proposed contract shall include a clause providing for a penalty of Three Hundred Dollars ($300.00) per day for delay (not beyond our control) in delivery after the above mentioned dates, and a premium of like amount for delivery earlier than these dates.

Insurance: During construction and until delivery to be provided by Builder.

Price: Two Hundred and Five Dollars ($205.00) per deadweight ton.

Terms of payment: On signing contract, for each vessel, $500,000.00; balance to be in fortnightly instalments equivalent to percentage of completion, as certified by Owner's representative. When 90% of contract price of each vessel shall have been so paid no further payments shall be due and payable until completion and acceptance by Owner.

A very considerable portion of the hull steel for these vessels has already been received in our yards and the balance is either en route or scheduled for early shipment from mills. All material for boilers is on hand. Engines, auxiliary machinery and equipment will be ready for installation by the time the hulls are ready to receive them. For this reason

we confidently expect to be able to make deliveries on schedule time or earlier if possible.

Respectfully submitted,

Union Iron Works Company,

John A. McGregor,
President.

F

Memorandum of Agreement made this twenty-ninth day of October, 1917, between the Bethlehem Steel Company, a corporation, organized and existing under the laws of the State of Pennsylvania, and having its principal place of business at South Bethlehem, Pennsylvania, party of the first part; Ore Steamship Corporation, a corporation organized under the laws of the State of Delaware, and having its principal place of business at South Bethlehem, party of the second part; Maryland Steel Company, a corporation organized under the laws of the State of Maryland, and having its principal place of business at Sparrows Point, Maryland; party of the third part; Spanish-American Iron Company, a corporation organized under the laws of the State of West Virginia, and having its principal place of business in the City of , party of the fourth part; the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, and having its principal place of business in the City of Washington, hereinafter called the Fleet Corporation, party of the fifth part; Witnesseth:

Whereas: Maryland Steel Company entered into a certain agreement in writing dated the fourth day of January, 1916, with Spanish-American Iron Com-

pany for the construction of a singlescrew steel freight steamship, to be known as Hull No. 161, which contract was thereafter assigned on or about the ninth day of September, 1916, to Ore Steamship Corporation, and

Whereas: Maryland Steel Company entered into a certain agreement in writing dated the twenty-fourth day of April, 1916, with Ore Steamship Corporation for the construction of a steel freight steamship, to be known as Hull No. 162, which contract has since been reassigned to Ore Steamship Corporation, and

Whereas: The Bethlehem Steel Company is constructing through its subsidiary company, three other steel ships, to be known as Hulls Nos. 165, 166 and 168, and

Whereas: Said five ships were duly requisitioned by the Fleet Corporation on August 3d, 1917, and are now the property of the United States, and

Whereas: Bethlehem Steel Company and Ore Steamship Corporation requested on October 12th, 1917, that the said five ships be transfefred to said Ore Steamship Corporation, and

Whereas: It has been represented to the Fleet Corporation, and Fleet Corporation believes that said five ships were constructed for the special purpose of transporting iron ore from Cuba and Chile to the plants of the Bethlehem Steel Company, and are not desired by the Fleet Corporation for the use of the United States, and

Whereas: The Fleet Corporation has issued no orders relating to the completion of said ships, which in any way increased their cost or delayed their de-

liveries, or in any way caused damage to any of the other parties of this agreement.

Now therefore, for and in consideration of the premises and of the performance of each and every of the agreements hereinafter contained and of the sum of one dollar each to the other in hand paid, the receipt of which is hereby acknowledged, it is agreed:

I.

The United States, acting through the Fleet Corporation, in accordance with the Statute of June 15th, 1917, and the Executive Order of July 11th, 1917, hereby transfers, sets over and assigns to Ore Steamship Corporation all of its right, title and interest in and to the said ships hereinabove described.

II.

The Bethlehem Steel Company, Ore Steamship Corporation, Maryland Steel Company and Spanish-American Iron Company hereby severally release the United States, the United States Shipping Board, and the United States Shipping Board Emergency Fleet Corporation from any and all liability of every nature whatsoever, arising out of the Requisition Order of August 3d, 1917, and/or any other order heretofore given prior to the date of these presents, relating to the said ships by the said Fleet Corporation, and the said parties hereby severally agree to indemnify and hold harmless the said United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation from any and all claims in connection with the said five ships, either arising out of the contracts under which the said ships or any of them were constructed or in any other manner.

The Fleet Corporation hereby consents to the completion of the said ships and to the use thereof after completion in the trade of the Ore Steamship Corporation and/or Bethlehem Steel Company until requisitioned by the United States Shipping Board or other governmental agency.

III.

Nothing in this agreement shall be construed as a waiver on the part of the Fleet Corporation or the United States Shipping Board, or any other governmental agency, of their or its right at some future time to requisition the said ships or any of them, or the use thereof.

IV.

Nothing in this agreement contained shall prejudice the right of the United States Shipping Board to fix or limit the amount of just compensation to be paid for the said ships or any of them or the use thereof, in the event of requisition.

In witness whereof the parties hereto have caused these presents to be executed by their duly authorized officers respectively.

Bethlehem Steel Company,

By H. S. Snyder,
Vice President.

Attest:
W. F. Hartmann,
Asst. Secy.

Ore Steamship Corporation,
By Jno. M. Gross,
President.

Attest:
F. H. Fatzinger
Maryland Steel Company,
By F. W. Wood,
President.
Attest:
John H. Shannahan
Spanish-American Iron Company,
By C. A. Buck,
President.
Attest:
W. F. Hartmann,
Asst. Secy.
United States Shipping Board
Emergency Fleet Corporation,
By Edward N. Hurley,
W. L. C.
Attest:
Lester Sisler
Secretary

EXHIBIT G-97

Oct. 30, 1917.

Union Iron Works,
San Francisco, Calif.

Gentlemen:

The Corporation is in receipt of your offer of October 26th for the completion of three vessels—your hulls 150, 151, and 153—on certain specified conditions.

Your attention is called to the fact that in our letter of October 13, 1917, you were authorized to

proceed with the construction of these vessels, payments to be made on the basis of actual cost plus approved overhead until other arrangements could be made.

Your attention is called to the fact that the specifications of the hull and machinery have not been received.

We ask you to state why the proposed price of $205.00 per d. w. ton for these vessels is so much greater than contemporaneous vessels building at your works. We ask you to inform us what prices of hull steel and other principal equipment for these vessels have been placed, and to state how it compares with that of other contemporaneous vessels.

Very truly yours,

F. T. Bowles,
Manager Division of Construction.

EXHIBIT G-101

BETHLEHEM SHIPBUILDING CORPORATION LTD.

Union Plant
San Francisco

Nov. 30, 1917

Captain A. F. Pillsbury,
District Officer, U. S. Shipping Board,
310 Sansome St., San Francisco.

Dear Sir:

Cargo Vessels—Hulls 150-151 & 153

Referring to my visit at your office this morning at which time you showed me letter dated November

20, 1917 from Admiral Bowles directing you to endeavor to expedite arrangements for purchasing from us certain vessels under construction the building of which was undertaken by us as a so-called stock proposition.

As explained to you I am rather at a loss to understand Admiral Bowles communication above referred to. I understand you are not familiar with the pending negotiations for the sale of our Hulls Nos. 150, 151 and 153 to the U. S. Shipping Board Emergency Fleet Corporation and for your information I might explain that while at Washington recently I took up with Admiral Bowles the question of the purchase by the Government of these vessels and in compliance with his request submitted him plans and specifications together with a tentative contract, which contract was duly executed by me on behalf of the Union Iron Works Company and all of which data is in Admiral Bowles possession. I might mention that at the time I submitted the contract and plans the complete specifications did not accompany them but these were subsequently furnished and I have Admiral Bowles' acknowledgment of their receipt.

In terms of the contract above referred to we offered substantially to sell these three vessels to the Emergency Fleet Corporation for the sum of $2,419,000.00 each, such lump sum price being calculated on a deadweight of 11,800 tons at $205.00 per deadweight ton with a provision for an allowance at the rate of $205.00 for every ton that each or any of the vessels might fall short of 11;800. The guaranteed sea speed of the vessels is 10½ knots and we guaranteed to deliver the first vessel by July 1st, the second vessel by July 15th and the third vessel

by July 31, 1918 under a penalty of $300.00 per day for every day that such delivery was delayed and a corresponding premium of $300.00 for every day such delivery was anticipated.

The contract provided for the sale of the vessels in accordance with the plans and specifications submitted and any changes involving extra cost should be paid for as an extra and likewise extend the above mentioned dates of delivery if any proposed changes should increase the time of construction.

I have looked over the changes in construction which have been proposed and it is quite evident that if the major changes suggested are required it will very considerably delay the completion and delivery of the vessels beyond the dates mentioned above. I would suggest that you send a night letter to Admiral Bowles and refer him to the fact that he has all the data before him and that as a matter of fact I had been expecting to hear from him on the subject.

Yours very truly,
John A. McGregor,
Pacific Coast Representative

EXHIBIT G-104

(Letterhead of Bethlehem Shipbuilding Corporation, Ltd.)

December 13th, 1917

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Proposal Covering Supply of Additional Tonnage

Referring to conference on December 12th, 1917 between representatives of the Emergency Fleet Corporation and of this Corporation, the following proposal is submitted for the construction of additional vessels at the various shipbuilding plants of the Bethlehem Shipbuilding Corporation, Ltd.

These vessels will be built at the following Plants:

Alameda Works of the Union Plant, San Francisco, Cal.
Sparrows Point Plant, Sparrows Point, Md.
Harlan Plant at Wilmington, Del.
Moore Plant at Elizabeth, N. J.
Quincy Works of the Fore River Plant, Quincy, Mass.

Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on

December 6th, 1917, by the Navy Department and this Company. The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as today existing, of Ten Percent (10%) of the present estimated cost of construction.

In the following proposals, it is the intention to supply so far as possible, duplicates of vessels already constructed at the various plants, rather than to adopt the so-called standard vessels of the Emergency Fleet Corporation or vessels actually built at other yards. This offers the obvious advantage of giving to each plant a class of work with which it is familiar from actual experience and for which all plans, order sheets and very often Mould Loft work is immediately available. The adaptation of plans from one Yard to another requires at best considerable work by the Draughting Room and this Company is experiencing at this time a serious shortage of this class of labor. It further necessitates the maximum amount of Mould Loft work, and here again at nearly all of its Yards the total output is dependent on the capacity of the Mould Loft to supply the necessary information to the Shipyard.

It is not desirable to concentrate a considerable number of special type ships at a single Yard as here again the volume of certain classes of labor would seriously limit the total output. To illustrate this point—it is much better from the standpoint of total production to call on the Harlan Plant for say three 7,500 ton Tank Vessels and three 5,000 ton cargo ships, rather than to attempt to build say five 7,500 ton tank vessels. The latter type require a maximum of staple work, riveting, testing and pipe work, and

the fact that skilled men in all of these trades cannot be obtained, would result in slowing down the total tonnage output.

In the following list of vessels, various alternate combinations are proposed in the order of this Company's preference. These are, of course, subject to alteration as the Emergency Fleet Corporation may desire to meet its policy as imposed by the urgent necessity of the present situation.

It was understood in conference that the Emergency Fleet Corporation desires proposals for troop ships. Because of the enormous volume of work for the U. S. Navy at the Fore River and Union Plants, these two Yards which would normally be available for this class of vessel, are entirely unable to undertake their construction at present. The demands upon their facilities and machinery for Torpedo Boat Destroyers, totalling altogether approximately 2,600,000 H. P. leaves no possibility of handling the machinery within any reasonable period. While the requirements of this class of ship for many other highly skilled mechanics and trades other than the iron workers also directly interferes with the output of Navy Vessels, it will be noted that these two Plants are obligated to the Government for not less than 70% of their total labor capacity.

The Moore Plant is only available for vessels of 325′ in length and less, while the facilities of the Harlan Plant are not suited to the construction of vessels of the size of these proposed transports.

The Sparrows Point Plant has only two slips that can take ships of 525′ or over and four slips that will handle ships between 500′ and 523′.

The size of the proposed transports, together with their estimated cost, which it is believed will be around Four Million Dollars ($4,000,000) each, renders them extremely undesirable vessels as part of the programme for the Sparrows Point Plant. The available facilities within the next eighteen (18) months will permit the building of nine (9) 10,000-ton cargo vessels of the type there under construction for the Emergency Fleet Corporation, duplicates of Hulls 174 and 175, 12-knot, two-deck—shelter deck general cargo steamers. If, on the other hand, two transports were undertaken by the Sparrows Point Plant, the number of this type of cargo vessel that could be undertaken would be three or a maximum of four thereby decreasing the total number of vessels turned out by either four or five from the number that would be produced on the basis of all cargo vessels.

The various Plants of this Company are equipped to handle the work for which proposals are submitted, with the following minor exceptions:

The Moore Plant, for additional crane and shipyard facilities, requires an expenditure of $100,000.00.

The Harlan Plant, for additional air compressors, the extension of an existing building slip, and miscellaneous equipment, $125,000.00.

The Sparrows Point Plant, for additional air compressors, machine shop tools, etc., $300,000.00.

The Alameda Works of the Union Plant, for miscellaneous shipyard and crane equipment, $300,000.00.

This proposal is based upon the Emergency Fleet Corporation paying for the above improvements at

their actual cost after each improvement has been passed on and authorized by them, and that the final value at the completion of the contract be adjudicated by an Arbitration Board, one member to be appointed by the Emergency Fleet Corporation, one by this Company, and the third to be chosen by these two members, and that this Company have the option of purchasing these improvements at the time at the value established by this Arbitration Board; otherwise the improvements are to be removed at the expense of the Emergency Fleet Corporation, and the Plant to be restored to its previous condition.

It is this Company's expectation that the vessels herein proposed will be completed within eighteen (18) months from January 1st, 1918, but while it undertakes to use its best endeavors to complete them with the utmost vigor and dispatch, taking account of the requirements of Navy contracts in Yards where vessels are building for the Navy Department, it is not willing to assume any penalties for failure to perform, nor does it request any premiums or anticipated completion.

This Company has contracts with the Midvale Steel & Ordnance Company, dated March 29th, 1917, and the Central Iron & Steel Company, dated March 19th, 1917, for a total of 6,850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at Six Cents (6c) per pound for the steel plates and Fifteen Cents (15c) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant Vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the

sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely, Six Cents (6c) for Steel Plates and Fifteen Cents (15c) per pound for Boiler Steel.

Union Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation; and also in addition to the four stock ships that are now under negotiation, the Union Plant will undertake the construction of:

1st. Six (6) 11,800-ton dead weight, single deck shelter deck cargo vessels, 3,000 H. P., 11 knots speed, duplicates of Hulls 162 and 163, commandeered by the Emergency Fleet Corporation: or

2nd. Three (3) 11,800-ton cargo vessels, as above specified, and Three (3) 10,100-ton tank vessels, about 2,600 Indicated H. P., 11 knots speed, duplicates of Hull 140, Commandeered by the Emergency Fleet Corporation August 3rd last, and completed on October 6th, 1917: or

3rd. Five (5) 10,100-ton tank vessels as above specified.

The first of these vessels would be laid down during the Summer of 1918, and all of them would be completed by July 1, 1919.

Sparrows Point Plant: In addition to the ships commandeered by the Emergency Fleet Corporation, and, in addition to one stock ship that is now under negotiation, the Sparrows Point Plant will undertake the construction of:

1st. Nine (9) 10,000-ton dead-weight general cargo vessels, two decks and shelter deck, machinery amidships, 4,000 H. P., 12 knots speed, duplicates of Hulls 174 and 175, commandeered by the Emergency Fleet Corporation on August 3rd last; or

2nd. Five (5) cargo vessels the same as the above and three (3) tank vessels, duplicates of Hull 440, built at the Harlan Plant, approximately 7,500 tons dead weight, 11 knots, the plans of which it is understood have been adopted by the Emergency Fleet Corporation as the standard for this size and type of vessel; or

3rd. Four (4) 10,000-ton cargo vessels as above specified and three (3) 9,100-ton tank vessels, 2,750 indicated H. P., 11 knots, of the type of Hulls 268 and 269, building at the Fore River Plant and commandeered by the Emergency Fleet Corporation on August 3rd last; or

4th. Seven (7) tank vessels of the type described under the third proposal, i. e., 9,100-ton dead weight capacity.

If the Emergency Fleet Corporation prefer, the 10,000-ton tank vessels of the type proposed for the Union Plant, could be substituted for the 9,100-ton vessels above specified.

The first of these vessels will be laid down April next and all will be completed not later than July 1st, 1919.

Harlan Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation and exclusive of the two 7,500-ton tank vessels that it is understood the Emergency Fleet Corporation desires to substitute for Hulls 450 and 451, con-

tracted for with the Savannah Line, the Harlan Plant will undertake the construction of:

1st. Four (4) 7,400-ton, 11 knots, 2,500 H. P. general cargo vessels, two decks—three-island type, duplicates of Hull 169 building at the Sparrows Point Plant, and commandeered by the Emergency Fleet Corporation on August 3rd last; or

2nd. Three (3) cargo vessels as above specified, and one (1) tank vessel (in addition to the two substituted for the Savannah Line vessels), duplicate of Hull 440, approximately 7,500 tons dead weight, 11 knots, built at this Plant, the plans of which it is understood have been adopted by the Emergency Fleet Corporation as the standard for this size and type of vessel.

It is expected that the first of these additional vessels will be laid down during the Summer of 1918, and all will be completed by July 1st, 1919.

Moore Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation, and also in addition to Hull 117, the change of which from a cargo vessel to a tank vessel is under negotiation between the Emergency Fleet Corporation and this Company, the Moore Plant will undertake the construction of:

1st: Six (6) cargo steamers, duplicates of Hulls 115 and 116, single deck, with Poop, Bridge and Forecastle, 1,750 H. P., 11 ¼ knots, 3,800 tons dead weight; or

2nd. Three cargo vessels as above specified and three (3) tank vessels, duplicates of modified Hull 117 mentioned above.

The first of these vessels would be laid down March 1st, 1918, and all of them would be completed by July 1st, 1919.

In addition to the above, this Plant can undertake the building of Six (6) Tugs of the smaller type designed by the Emergency Fleet Corporation, the first to be laid down February 1st, 1918 and the last to be completed July 1st, 1919.

The larger tugs designed by the Emergency Fleet Corporation could be substituted for some of the cargo and tank vessels above proposed, if so desired.

Fore River Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation, the Fore River Plant will undertake the construction of:

1st. Four (4) 8,300-ton dead weight, two decks, three island type cargo vessels, machinery amidships, 2,500 H. P., 10 ½ knots speed, duplicates of Hulls 272 and 273 building at this Plant and commandeered by the Emergency Fleet Corporation on August 3rd last; or

2nd. Three (3) 9-100-ton Tank Vessels, duplicates of Hulls 268 and 269, 2,750 indicated H. P., 11 knots, built at this Yard, and commandeered by the Emergency Fleet Corporation on August 3rd last.

This proposition is dependent on the Navy Department continuing to allow the Battle Cruiser slip to be used for the construction of Merchant vessels. This Yard will have, including this Battle Cruiser slip, three ways available for Merchant construction, and the above number of vessels will be decreased by one if this slip were to be appropriated to Navy work.

The first of these vessels will be laid down May 15th next and all will be completed not later than July 1st, 1919.

Until the Emergency Fleet Corporation has settled on the types and sizes of vessels that it may desire to order from us for construction at the above Plants, no definite proposals as to fees per ton and estimated costs are submitted.

If the proposals that are listed first in the case of each Yard are accepted, they provide for the following tonnage:

Union Plant	6	11,800 ton ships	70,800 tons
Sparrows Point	9	10,100 ton ships	90,900 tons
Harlan Plant	4	7,400 ton ships	29,600 tons
Moore Plant	6	3,800 ton ships	22,800 tons
Moore Plant	6	Tugs	
Fore River Plant	4	8,300 ton ships	33,200 tons
A total of	35	vessels, to total of	247,300 tons

to be completed, in addition to all commandeered vessels and stock vessels, prior to July 1st, 1919.

It is requested that the proposals in this letter be considered immediately and that representatives of this Company be called in conference, with a view to settling the Emergency Fleet Corporation's requirements for vessels from its Yards, at the earliest practicable date.

Respectfully,

Bethlehem Shipbuilding Corporation, Ltd.

By J. W. Powell,
Vice President.

EXHIBIT G-105

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
South Bethlehem, Pa.

December 14th, 1917.

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

This Company submitted a letter dated December 13th, 1917 proposing to supply additional tonnage from its various Plants, and on Pages 8 and 9 listed the additional vessels that could be constructed by this Company's Harlan Plant, Wilmington, Del.

In the conference yesterday with a representative of the Emergency Fleet Corporation, instructions were issued to submit proposals for two (2) additional 7,500-ton dead weight, 11 knot, tank vessels, duplicates of Hull 440, built at the Harlan Plant, instead of Hulls 450 and 451, commandeered by the Emergency Fleet Corporation, the construction of which was stopped by its order, and contracts for which we are instructed are to be cancelled.

It was further understood at this conference that the Harlan Plant would be allowed in full for any expenditures made to date on these Hulls, with the understanding that as much of the material as practicable would be used in later contracts and a proper allowance made the Emergency Fleet Corporation for any such material utilized, the disposition of unused material to be taken up with the Emergency

Fleet Corporation at the completion of the contracts for the Oil Tank Vessels and other additional tonnage now under negotiation between the Emergency Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for construction at its Harlan Plant.

Further instructions were issued to submit statement of cost to date on these contracts. This will be prepared and forwarded at an early date.

With reference to the two Tank Vessels to be undertaken in place of Hulls 450 and 451, these will be built upon the same terms and conditions as may be agreed upon in connection with the additional tonnage, as proposed in our letter of December 13th, 1917, covering construction at all of this Company's Plants, thus increasing the total number of vessels as listed to thirty-seven and the total tonnage to 262,300 tons.

It is requested that this proposal be considered in connection with those in our letter of the 13th instant.

Respectfully,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-107

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
South Bethlehem, Pa.

December 14th, 1917.

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Subject: Stock Vessels.

Referring to conferences on December 12th and 13th, 1917, between representatives of the Emergency Fleet Corporation and of this Company, on the subject of the completion and delivery of stock vessels at this Company's Union Plant, San Francisco, Cal., and Sparrows Point Plant, Sparrows Point, Md.:

Hulls 150, 151, 153 and 170 at the Union Plant, and Hull 176 at the Sparrows Point Plant were undertaken by the respective Plants as stock vessels.

Hull 151 is 11,700 tons dead weight, two deck and shelter deck freighter, with Triple Expansion Reciprocating Engines, 2800 H. P., three Scotch Boilers, speed 11 knots.

Hulls 150 and 153 are 11,800 tons dead weight, two deck and shelter deck freighters, with Curtiss Turbine Reduction Gears, speed 11 knots, 2600 H. P., three Scotch boilers.

Hull 170 is a single deck shelter deck freighter, dead weight 12,000 tons, 3000 H. P., 11 knots speed, duplicate of Hulls 162 and 163, commandeered by the Emergency Fleet Corporation, except that Westinghouse Turbine Reduction Gear is installed instead of Curtiss.

Hull 176 at Sparrows Point Plant is a two-deck three island type general cargo vessel, dead weight 7400 tons, 2500 H. P. Triple Expansion Engines, 11 knots speed; duplicate of Hulls 169 and 170, commandeered by the Emergency Fleet Corpn. on August 3rd last.

The plans and specifications for Hulls 150, 151 and 153 are now in the hands of the Emergency Fleet Corpn., while Hull 170 (Union Plant) and Hull 176 (Sparrows Point Plant) are duplicates of vessels building for the Emergency Fleet Corporation at these respective Yards.

This Company is prepared to construct these vessels at a price of $205.00 per dead weight ton, exclusive of the cost of changes, armed guard equipment, gun foundations, magazines and other accessories that may be required by the Emergency Fleet Corporation. These latter are estimated to cost approximately $75,000 per vessel.

The four stock vessels building at the Union Plant will be delivered between July and December, 1918, and that at the Sparrows Point Plant about October, 1918.

This Company assumes all responsibility for the cost of these vessels under this form of contract, except any increase of wages made in accordance

with instructions from the Emergency Fleet Corporation.

Respectfully,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-109

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
Wilmington, Del.

December 19, 1917.

Proposal Covering Supply of Additional Tonnage

Emergency Fleet Corporation,
United States Shipping Board,
Washington, D. C.

Sirs:

On Tuesday, December 18th, 1917, in conference with the Vice-President of the Emergency Fleet Corporation and his representatives, the Bethlehem Shipbuilding Corporation, Ltd., was instructed to submit a proposal, in accordance with the terms of its letter of the 13th instant, for vessels to be built at its various yards, as follows:

THE UNION PLANT:

Five (5) Tank vessels of about 10,100 tons d. w., 2600 H. P., 11 knots reciprocating engines, oil-burning Scotch boilers, in general duplicates of Hull

#140 commandeered by the Emergency Fleet Corporation on August 3, 1917. Vessels to be complete with armed guard equipment and war zone requirements in force at this date.

SPARROW'S POINT PLANT:

Three (3) Tank Vessels of about 10,100 tons d. w., duplicates of those above described to be built at the Union plant.

And Two (2) Troop ships, in general in accordance with the Emergency Fleet Corporation's design and specifications.

HARLAN PLANT:

Three (3) Tank Vessels of about 7,500 tons d. w. (including two vessels to be built instead of two Savannah Line Ships, contracts for which have been cancelled by the Emergency Fleet Corporation), 11 knots, reciprocating engines, oil-burning Scotch boilers, in general, duplicates of Hull #440, built for the Pan-American Petroleum & Transport Co., complete with armed guard equipment and war zone requirements in force at this date.

And Three (3) Cargo Vessels of about 7,400 tons, 11 knots, 2500 H. P., reciprocating engine, coal-burning Scotch Boilers, in general, duplicates of Hull #169 building at the Sparrow's Point Plant and commandeered by the Emergency Fleet Corporation on August 3rd, 1917, complete with armed guard equipment and war zone requirements in force at this date.

MOORE PLANT:

Twenty (20) Sea-going Tugs, of about 150 ft. in length, in general accordance with the Emergency Fleet Corporation's design and specifications.

FORE RIVER PLANT:

Three (3) Tank Vessels of about 9,100 tons d. w., 11 knots, reciprocating engines, in general, duplicates of Hulls 268 and 269 commandeered by the Emergency Fleet Corporation on August 3, 1917, last complete with armed guard equipment and war zone requirements in force at this date.

With reference to the types and numbers of vessels upon which this Company is requested to submit proposals, the following comments are submitted:

1. UNION PLANT: In its letter of the 13th instant, the undesirability of placing orders for special type ships at a single yard is noted. Five (5) tank vessels at the Union Plant means a concentration of anglesmith, riveting, testing, and pipe fitting work at a single yard and at a single time, as these vessels will be on the stocks of the Alameda Works at the same time, and will seriously interfere with production. Moreover, the same classes of skilled labor are extensively required for the Destroyer and Submarine program of the Union Plant, with the result that there is every probability that the completion of the tankers will be delayed by the more urgent requirements of the Naval vessels.

2. SPARROW'S POINT PLANT: The Emergency Fleet Corporation has stated that two (2) troop ships shall be undertaken by the Sparrow's Point Works. These ships will require a large draughting force for their design, and a large force of skilled workmen for their construction. This Company has been particularly pressed for draughtsmen, and this Plant has not been able to operate at

much over 50% capacity for want of skilled workmen. It is very doubtful whether these ships can be completed within thirty (30) months, and this should be clearly understood at this time before the Sparrow's Point Plant undertakes their construction.

3. Fore River Plant: The objections stated to building of tank vessels at the Union Plant apply with equal force to the building of all tank vessels at the Fore River Plant.

4. Harlan Plant: In going over the building schedule of the Harlan Plant today, it has become evident that, because of the size of the vessels upon which proposal is requested, it will be necessary to reduce the number of tank vessels and cargo ships from three each to two each, in order to complete them within the next eighteen (18) months.

This Company's letter of December 13th proposed to construct such vessels as may be ordered by the Emergency Fleet Corporation for actual cost plus a fee, with an agreed upon base cost, this Company to be paid, in addition to the fee, one half of any saving that may be made below this base cost, and with a further provision that the said base cost will be increased, due to any increase of rate in wages that may be paid by the order of the Emergency Fleet Corporation. This would not apply in the case of the troop ships, as it is impossible to make an approximate estimate of their cost, and it is therefore proposed that, if these vessels must be built at the Sparrow's Point Plant, they shall be constructed on a straight cost and percentage basis.

The fixed fees and estimated costs of the various vessels are, as follows:

	Fee each vessel.	Estimated Cost, exclusive of fee.
10,100-ton Tank Vessel	$240,000	$2,181,600
9,100-ton Tank Vessel	220,000	1,983,800
7,500-ton Tank Vessel	175,000	1,680,000
Troop-ship	15% of cost	
7,400-ton Cargo Vessel	150,000	1,450,000
Sea-going Tugs	35,000	300,000

As stated in this Company's letter of the 13th instant, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction but, based upon a close study of the facts affecting cost, and the knowledge of increase therein in the last two years, and making allowances as seem reasonable to cover the next eighteen (18) months the period of construction of these vessels —the estimates for the 10,000-ton tank vessels and the 7,400-ton cargo vessels are, as follows:

	10,000-ton tank vessel per d. w. ton.	7,400-ton cargo vessel per d. w. ton.
Labor, materials and operating expense—	$187.50	$168.50
Administrative, Selling & General expense—	18.75	16.85
Extra cost of steel, as per page 6, Letter of December 13th, averaged over all extra tonnage—	2.50	2.50
Cost of armed guard equipment and war zone requirements—	7.00	8.00
	$215.75	$195.85
Say	$216.	$196.

The figures quoted above for the smaller tank vessels are based upon those given for the 10,000-ton vessel. Average costs have been used between East and West Coast construction to cover the 10% difference in labor costs and the 5% additional material cost for vessels built on the West Coast as compared with those in the East Coast yards.

Representatives of this Company will call on the Emergency Fleet Corporation to personally consider the subject matter of this letter, with a view to the earliest determination as to the work which it may be desired to undertake, and, it is needless to add, such orders as are given it will receive its best efforts, with a view to their completion at the earliest date consistent with obligations already assumed for the United States Navy and for the Emergency Fleet Corporation.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.,

By (signed) J. W. Powell,
Vice-president.

EXHIBIT G-110

December 19, 1917.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Penna.

Gentlemen:

Proposal covering supply of additional tonnage

In reply to your letter of the 13th instant, and in accordance with our conference of yesterday af

terncon with your Messrs. Powell and Brown, it is requested that you submit proposals for the following program:

(a) 5—10,000 ton tankers, to be built at your Union Plant;

(b) 2—10,000 ton Union tankers, and 2—10,000 ton troop ships, to be built at your Sparrows Point Plant;

(c) 3—cargo vessels, and 1 tanker of about 7500 tons, to be built at your Harlan Plant;

(d) Such number of sea-going tugs as you believe can be promptly constructed at the Moore Plant;

(e) 3—9,100 ton tankers, to be constructed at the Fore River Plant.

All of the above vessels are to be coal burners, except the tankers and troop ships; which will be oil burners, and all are to be fitted with Scotch boilers except the troop ships.

Plans and specifications of all vessels, that you are proposing to build from your own plans and specifications, must be submitted for approval.

Very truly yours,

F. T. Bowles,
General Manager.

EXHIBIT G-112

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
South Bethlehem, Pa.

December 20th, 1917.

Mr. Charles Piez, Vice President,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sir:

In its letter of December 14th, the Bethlehem Shipbuilding Corporation, Ltd., offered to the Emergency Fleet Corporation, Ltd., its Hulls 150, 151, 153 and 170 building at the Union Plant; and its Hull 176 building at the Sparrows Point Plant, at a price of $205.00 per dead weight ton, exclusive of cost of changes, armed guard equipment, gun foundations, magazines and other accessories that may be required by the Emergency Fleet Corporation, these latter being estimated to cost approximately $75,000 per vessel.

The Emergency Fleet Corporation has requested further details in regard to this quotation. It is impracticable in this market to estimate within a reasonable percentage what will be the actual cost of construction, but, based upon close study of facts effecting the Shipbuilding costs and a knowledge of increases therein in the last two years, the probable cost of these vessels now building on the Pacific Coast is as follows:

Labor, Material and Operating Expenses	$ 161.50
Administrative, Selling & General Expense	16.10
Total	$177.60,

exclusive of changes, etc., as enumerated above. The asking price shows a margin of 15% beyond this estimate.

In the case of the vessel built at the Sparrows Point Plant, the estimated cost would be about $10.00 per ton less, due to lower labor and material cost in the East Coast Yards.

These vessels were undertaken by the Union and Sparrows Point Plants of this Company months before the commandeering order of August 3rd last. All risk due to unforeseen conditions was assumed by the Company, in the belief that when these vessels could be offered for short delivery they would sell at a price that would net a very large profit. Present conditions show that except for the entry of the United States into the War and the authority vested in and exercised by the Emergency Fleet Corporation to prevent sale to other customers, that this speculation would have been immensely profitable.

A large part of the material for the vessels building at the Union Plant has been assembled in the Shipyards, and a considerable percentage of the steel has been fabricated. In the case of the single stock vessel building at the Sparrows Point Plant, all of the material is ordered, but to date the only material received is about one-half of the hull plates. In the case of the Union Plant large sums of money have been invested in this material, the interest

charges on which have become a part of the cost of construction.

The Alameda Works of the Union Plant, at which its merchant contracts are now constructed, is a new and permanent Plant, built in a labor and material market that has increased the cost of construction at least 50% beyond the cost in a normal market.

It was this Company's expectations that its profits on these stock ships would justify this expenditure, by showing a return that would repay this additional construction cost. It is now faced with the War Profit and Excess War Profit Taxes, which will result in turning over to the Government the larger part of its earnings.

Wages at the Union Plant have increased 31% and a 10% attendance bonus has been recently added to further augment this increase, while inefficiency of new labor and lack of co-operation due to present unsettled labor conditions, have resulted in a total increase of at least 75% over those of a year ago.

In the East, the new Navy Yard wage scale in effect December 15th, and the general labor shortage will operate in a like manner and to substantially a like degree.

While the above facts are not susceptible of being placed in quantitative form, they are well known to all Shipbuilders. A comparison of recent prices on ships for comparatively long term delivery, and upon a basis of last May's wages, built by Yards who assemble and do not construct the greater part of the machinery and equipment, and who have small

investment in their business, would appear to fully justify the price named in this Company's letter.

Early action is requested on these contracts, to permit the construction of these vessels to proceed with the maximum dispatch.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell
Vice President.

EXHIBIT G-116

Letterhead of
BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

January 3rd, 1918.

Mr. Charles Piez,
Vice President and General Manager,
Emergency Fleet Corporation
Washington, D. C.

Dear Sir:

Referring to this company's letter of the 19th ultimo, submitting a proposal covering the supply of additional tonnage, further study of this situation at the Union Plant, San Francisco, California, has showed that it will be practicable to undertake the construction of ten (10) tank vessels instead of five (5), or of six (6) additional 11,800 ton deadweight cargo vessels, a total of twelve (12) instead

of six (6) of all of these vessels to be delivered prior to July 1, 1919. This would entail the construction of additional ways and a total additional capital expenditure of about $500,000 to be financed by the Emergency Fleet Corporation as proposed in our letter of the 13th ultimo.

We further refer to my conference with the Vice President and General Manager of the Emergency Fleet Corporation on Friday the 21st ultimo. This will confirm the statement then made that while this Company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-122

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
South Bethlehem, Pa.

January 17, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sirs:

Referring to your letter of the 5th instant with reference to Hulls Nos. 150, 151, 153 and 170, we hereby confirm the oral advice given to you by our Mr. Brown that in advising you in regard to our stock ships under construction at our Union Plant we inadvertently omitted to report that we had at said plant general plans and specifications of and had ordered some materials for two other stock vessels, to which we assigned on our books the numbers 215 and 216.

These two vessels are to be of about 11,800 tons deadweight capacity; are single deck, shelter deck, cargo vessels, and are to be fitted with Scotch boilers and reciprocating engines. They are to have a speed of about 10 1/2 knots and are to be of the following dimensions:

Length P. P.	440 feet
Moulded breadth	56 "
Moulded depth	38 "
Lloyds draft	28 " , 6 inches

and are to be classed 100 A 1 at Lloyds.

The materials ordered for these vessels consist of structural steel and anchors and chains. Orders for other materials are in course of preparation.

In accordance with our present schedule the keel of Hull No. 215 will be laid about November 1, 1918 and that of Hull No. 216 about November 15, 1918. Delivery of Hull No. 215 is scheduled for April, 1919, and of Hull No. 216 for May, 1919. If you shall decide that these two hulls are covered by your requisition order, we desire that they shall be treated in the same way and covered by contracts the same as our Hulls Nos. 150 and 153. The estimated price of each is to be $2,124,000, with a fixed profit of $212,400 for each vessel and one-half of any saving under the estimated price, as provided in such contract.

Very truly yours,
Bethlehem Shipbuilding Corporation, Ltd.,
By H. Brown,
Technical Manager.

EXHIBIT G-124

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
South Bethlehem, Pa.

February 12, 1918.

U. S. Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Referring to this Company's letter of the 17th ultimo, advising you that two (2) stock ships were

building at its Union Plant Numbered Hulls 215-216 that had not been covered by contracts arranged between this Company and the Emergency Fleet Corporation, there are handed you herewith plans and specifications for these vessels.

With reference to Fleet Corporation's telegram requesting information on the subject of steel orders, the steel for these vessels was included in a contract made on a tonnage basis with the Carnegie Steel Company dated July 15th, 1916. The actual steel was specified in July, 1917, just prior to the expiration of the contract in order to utilize the tonnage for which this Company was under contract.

Our letter of the 17th ultimo proposed a basis upon which these ships should be taken over and so far as delivery is concerned, they can be fitted into the general program of vessels building at our Union Plant as may best suit the needs of the Fleet Corporation and keeping in view the necessity of utilizing the available steel to prevent any part of the plant from lying idle.

It is requested that this matter be given early consideration as we are anxious to close up all of these pending questions with the Fleet Corporation.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,
By J. W. Powell,
Vice President.

EXHIBIT G-125

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
South Bethlehem, Pa.

February 25, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Subject: Proposed Additional Tonnage.

Gentlemen:

Referring to our letter of December 19, 1917, submitting for the consideration of the United States Shipping Board, Emergency Fleet Corporation, proposals for the consideration of additional tonnage, and to subsequent correspondence in relation thereto—we beg to advise the Corporation that owing to the rapid increase in the supply of labor at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd., we are prepared to consider in addition to the vessels already contracted for, the following vessels:

Four (4) tank vessels of 10,100 tons deadweight, duplicates of those now building at the Sparrows Point Plant under contract between the Bethlehem Shipbuilding Corporation, Ltd., and the United States Shipping Board, Emergency Fleet Corporation,—

And three (3) 7,400-ton cargo vessels, duplicates of those now building at the Harlan Plant under contract between the Bethlehem Shipbuilding Cor-

poration, Ltd., and the United States Shipping Board, Emergency Fleet Corporation.

Delivery of these vessels can be made as follows:

Tank Vessels.

1 vessel July 1919
1 " August 1919
1 " September 1919
1 " October 1919

Cargo Vessels.

1 vessel September 1918
1 " July 1919
1 " October 1919.

We propose to construct the above vessels for the same price and under the same terms and conditions as are embodied in the contracts now in force between our respective Corporations, except as regards deliveries given above.

We feel that in order to operate this plant with the greatest efficiency, it will be necessary to obtain additional tonnage. Otherwise, by the latter part of 1918 there will be several unoccupied ways and if the United States Shipping Board, Emergency Fleet Corporation have contracted for their full requirements, we respectfully request that we be permitted to negotiate with outside parties for the available space.

Your very truly,

Bethlehem Shipbuilding Corporation, Ltd.,
J. W. Powell,
Vice President.

EXHIBIT G-126

March 7th, 1918.

U. S. Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:—

On February 25th this Company submitted a proposal for additional tonnage to be constructed at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd.

On the 1st instant the Vice President & General Manager of the Emergency Fleet Corporation discussed by telephone with the writer the prices quoted on these vessels.

Please be advised that this Company cannot offer these vessels to the Emergency Fleet Corporation on any lower basis than that quoted in our letter above mentioned, since its mature judgment leads it to believe that a less price will not yield a living profit. However, because of its full appreciation of the Nation's desperate need of ships, it desires to repeat the offer made orally and in writing in December and January last, that it will accept the order to construct these additional vessels at such lower base price and such smaller fee as may be personally determined by Mr. Charles Piez, Vice President and General Manager, with proviso in the present instance that the contracts will otherwise be duplicates of those for new construction already signed by the Bethlehem Shipbuilding Corporation, Ltd., and the Emergency Fleet Corporation.

It is strongly urged that there be no delay in placing this order as the date of the completion of the smaller vessels in its proposal will be delayed to the same extent as is the settlement of this question.

Very respectfully,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-127

March 18, 1918.

Bethlehem Steel Corporation
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of the 7th instant, relative to your proposal of February 25th, covering the construction of four 10,100 ton tankers and three 7,400 ton cargo vessels at your Sparrows Point plant, the said vessels to be similar to those you are now building for the Board under contracts Nos. 179 and 178, respectively, you are hereby given an order for the construction of the above vessels, under the terms of the said contracts with the exception that the estimated base cost in the case of the tankers is to be reduced to $2,000,000 and in the case of the cargo vessels to $1,295,000; the fee contemplated by your present contracts, in both instances, to remain the same.

Kindly acknowledge receipt of this letter and

signify your acceptance or rejection of the above order.

Very truly yours,

(Signed) Charles Piez,
Vice President and General Manager.

EXHIBIT G-128

U. S. SHIPPING BOARD,
Emergency Fleet Corporation,
Washington, D. C. April 8, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of January 17th offering to construct two of your stock cargo vessels of about 11,800 tons d. w. capacity, for the Board, you are hereby given an order, as a preliminary step, to entering into contract with the Corporation, for the construction of the above vessels; the vessels to be constructed under a cost plus fee basis form of contract, the estimated base price to be $2,000,000.00 per vessel, with a minimum fee of $200,000.00 per vessel. Any saving in cost to be divided equally between the Corporation and yourself.

Kindly acknowledge receipt of this letter. If the above order is accepted a draft of contract will be forwarded you for signature at an early date.

Very truly yours,

Charles Piez,
Vice President and General Manager.

EXHIBIT G-130

Letterhead of
BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

April 16, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Your letter of the 8th instant replies to ours of January 17th last, and as a preliminary step to entering into contract with the Corporation for the construction of two stock vessels known as Hulls 215 and 216 to be constructed at the Union Plant, the Corporation offers an estimated base price of Two Million ($2,000,000) Dollars per vessel and a minimum fee of Two Hundred Thousand ($200,000) Dollars.

This Company considers these prices as inadequate to afford it a proper remuneration for its efforts. In connection with prices recently paid for vessels of similar size building on the East Coast, we were informed a base price of about One Million Nine Hundred Thousand ($1,900,000) Dollars was acceptable to the Fleet Corporation. In comparing this price with the cost of vessels built on the West Coast, the following items of additional cost in connection with the stock ships to be built at our Union Plant should be noted:

1st. It is figured that the additional freight to the Union Plant as compared to one of our Eastern

Yards on a vessel of this size amounts to about $42,000,

2nd. The net cost of all material entering into the ship, averages somewhat higher than on the East Coast a difference that we estimate at about $20,000.

3rd. Taken from our average returns as to the cost per hour of labor in our East and West Coast yards the cost of labor on the Pacific Coast is still, on a vessel of this type, in the neighborhood of $6 per deadweight ton higher than on the East Coast a difference of approximately $70,000.

The total of items 1-2 and 3 therefore shows a difference of excess cost on the West Coast as against the East Coast of One Hundred Thirty Two Thousand ($132,000) Dollars.

In view of the above, it is strongly urged that no reduction be made in our original base price, but as stated in our conference yesterday, in order to prevent further delay in the construction of these vessels, we will accept as a base price on them Two Million Seventy Five Thousand ($2,075,000) Dollars and a minimum fee of Two Hundred Seven Thousand Five Hundred ($207,500) Dollars, any saving in the cost to be divided equally between the Corporation and this Company—and with the further understanding that the contract for these vessels will be in all other respects the exact duplicates of those executed for Hulls 150—153 and 170 building at our Union Plant.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-131

WESTERN UNION
Telegram

1918 Apr 18 PM 6 54

B549NY 38
South Bethlehem Penna 635P 18

Chas A Piez

United States Shipping Board No 1319 F St Washington DC our letter to be handed you Friday morning contains error -please change dates from July 1918 to July 1919 and from January 1919 to Jany 1920

BETHLEHEM SHIPBUILDING CORPN.

EXHIBIT G-132

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
Bethlehem, Pa.

April 18, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
1319 "F" Street,
Washington, D. C.

Attention: Mr. Charles Piez, Vice President & General Manager.

Gentlemen:

We have been checking over our schedules of construction at the various Plants of the Bethlehem

Shipbuilding Corporation, Limited, with a view of submitting proposals to the United States Shipping Board, Emergency Fleet Corporation for tonnage in addition to that already contracted for or in process of settlement, with the result that we find we can offer to construct and deliver from our various Plants, the following vessels for delivery between July 1919 and January 1, 1920.

Fore River Plant.

Three (3) Tank Vessels of about 9100-tons dead weight, duplicates in all respects of those contracted for with the United States Shipping Board, Emergency Fleet Corporation, its contract No. 183 dated December 31, 1917. The price, terms and conditions of contracts to remain the same as in said contract.

Moore Plant.

Ten (10) tug boats, duplicates in all respects of those contracted for with the United States Shipping Board, Emergency Fleet Corporation, its contract No. 184, the price, terms and conditions of contracts to remain the same as for the last 14 boats ordered.

Or, as an alternative to the above, we can construct and deliver three (3) cargo vessels of about 4800 tons dead weight under the same terms and conditions of contract as entered into for other cargo vessels contracted for with us by the United States Shipping Board, Emergency Fleet Corporation. The price however, to be determined after we have had an opportunity to prepare plans and specifications and estimate of cost.

Harlan Plant.

Three (3) 7500-ton tank vessels, duplicates in all respects of the 7500-ton tank vessels being con-

structed at this Plant under the Shipping Board's contract No. 178. The price, terms and conditions to be the same, and:

Seven (7) 5100-ton cargo vessels in accordance with plans and specifications to be submitted within the course of the next few days and to be constructed under the same terms and conditions embodied in contract 178 for the 7400-ton cargo vessels being constructed at this plant, excepting that price, based on wage schedule of January 3, 1918, will be $1,045,000.00 each and fee will be $105,000.00 each.

The proposal for the work at this Plant is submitted with the understanding that the United States Shipping Board, Emergency Fleet Corporation, will provide additional facilities which it now has under consideration, in reference to lighting of Plant, railway and electric locomotive along side building slip and additional fire protection.

Sparrows Point.

Three (3) 10,100-ton tank vessels and three (3) 7400-ton cargo vessels, duplicates in all respects of those ordered by the United States Shipping Board, Emergency Fleet Corporation in its letter of March 18, 1918, contracts for which have not yet been executed by the United States Shipping Board, Emergency Fleet Corporation but which were executed by us on March 18, 1918 and are now before the Corporation for its action. The price, fee and other terms and conditions of the contracts to be the same.

Union Plant.

Six (6) 10,100-ton tank vessels, duplicates in all respects of those under contract with the United States Shipping Board, Emergency Fleet Corpora-

tion, its contract No. 177, the price, terms, and conditions to remain the same. And:

Six (6) 11,800-ton cargo vessels, duplicates in all respects of Hulls 215 and 216 being constructed at the Union Plant and for which negotiations are now under way with the United States Shipping Board, Emergency Fleet Corporation. The price, terms and conditions to be as agreed upon for Hulls 215 and 216.

We would suggest for your consideration, as a means for economizing time, that in the event of the acceptance of the proposals contained herein, we receive an order by letter to be attached to the previous contracts extending the number of vessels to be constructed under those contracts, from the original number, applicable to any of the proposed vessels, which may be selected from the proposals contained herein. This would apply to the vessels at the Sparrow's Point Plant, at the Moore Plant in the case of the tug boats, at the Harlan Plant in the case of the tank vessels, at the Fore River Plant and at the Union Plant.

We respectfully request an early reply to this communication in order that expenses and time may be reduced to a minimum, since it will be possible for us to put these additional vessels through our Drafting Room, Order Department, Purchasing Department and Material Division in a large part, along with the vessels which we are now constructing for the Shipping Board.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,

H. Brown

Technical Manager.

EXHIBIT G-133

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

April 22nd, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of the 16th instant, stating that you consider the estimated base cost named in our letter of the 8th instant too low to insure you a workable profit, and asking that it be increased to not less than $2,075,000 with a corresponding minimum fee of $207,500 per vessel, you are advised that in view of the statements contained in your above letter the Corporation agrees to the increase in question. Accordingly the estimated base price stated in our letter of the 8th instant should be modified to read $2,075,000, with a corresponding increase in minimum fee to $207,500 per vessel.

Very truly yours,

Charles Piez
Vice President and General Manager

EXHIBIT G-134

April 30, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of the 18th instant, relative to contracts for certain additional vessels necessary to carrying the building program at your several plants through 1919, you are hereby given an order, as a preliminary step to entering into contract with the Corporation for the construction of the following vessels, under the terms and conditions hereinafter set forth:

Fore River Plant: Three 9100 ton tankers, at cost plus a minimum fee of $185,000, with an additional fee of one-half the savings, if any, between the actual cost and the estimated base cost of $1,850,000.

Sparrows Point Plant: Three 10,100 ton tankers, at cost plus a minimum fee of $200,000 with an additional fee of one-half the savings, if any, between the actual cost and the estimated base cost of $2,000,000.

Union Plant: Six 10100 ton tankers and six 11800 tons cargo vessels, the said vessels to be constructed for cost plus a minimum fee of $210,000 and $207,500 respectively, with an additional fee of one-half the savings, if any, between their respective actual cost and the estimated base cost of $2,100,000 and $2,075,000 per vessel.

The general terms of the contract covering the construction of the above vessels to be similar to those you now have with the Corporation.

The question of three 7500 ton tankers and seven 5100 ton cargo vessels, to be constructed at your Harlan plant and the three 7400 ton cargo vessels to be constructed at your Sparrows Point plant, has been held in abeyance pending further investigation relative to the estimated base cost of the vessels in question. The question of additional tugs to be constructed at your Moore plant has also been held in abeyance pending decision as to the type of tug to be constructed.

Kindly acknowledge receipt of this letter. If the terms and prices mentioned therein are satisfactory it is suggested that you prepare a contract draft similar to your present contract and forward it to the Corporation for execution.

Very truly yours,

Charles Piez
Vice President.

EXHIBIT G 135

May 15, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
Bethlehem, Pennsylvania.

Gentlemen:

In further reply to your letter of April 18th, relative to contracts for certain additional vessels to

complete the 1919 building program at certain of your plants and with reference to our letter of April 30th, stating certain of the vessels in contemplation had been held in abeyance pending further investigation relative to the estimated base cost, etc., you are advised that in view of our recent discussion with you and confirming our understanding reached at that time, you are hereby given an order as a preliminary step to entering into contract with the Corporation for the construction of the following vessels, under the terms and conditions hereinafter set forth:

Harlan Plant: Three (3) 7500 ton tankers and seven (7) 5100 ton cargo vessels. The said vessels to be constructed at cost plus a minimum fee of $156,000 and $98,000, respectively, with an additional fee of one-half the savings, if any, between the respective actual cost of the vessels and the estimated base cost of $1,560,000 and $980,000 per vessel.

Sparrows Point Plant: Three (3) 7400 ton cargo vessels at cost plus a minimum fee of $125,000 with an additional fee of one-half the savings, if any, between the actual cost per vessel and the estimated base cost of $1,250,000.

Moore Plant: Ten (10) ocean-going tugs at cost plus a minimum fee of $30,000 per tug, with an additional fee of one-half the savings, if any, between the actual cost per tug and the estimated base cost of $300,000.

The general terms of the contract covering the construction of the above vessels are to be similar to the other contracts you now have with the Corporation.

Kindly acknowledge receipt of this letter. If the terms and prices mentioned therein are satisfactory, it is suggested, as a means of saving time, that you prepare a contract draft similar to your present contract and forward it to the Corporation for execution.

Very truly yours,

H. Coonley,
Vice President.

EXHIBIT G-150

EXTRACT FROM PROCEEDINGS
OF THE
UNITED STATES SHIPPING BOARD

June 9, 1920.

RESOLVED, That the power and authority relating to the rights and liabilities of the Emergency Fleet Corporation vested in the Shipping Board by subsection "c" of Section 2 of the Merchant Marine Act approved June 5, 1920, be exercised by the Shipping Board through and by the United States Shipping Board Emergency Fleet Corporation, to which is hereby delegated the exercise of such power and authority, in accordance with Section 35 of the above-mentioned act.

The foregoing resolution was adopted.

EXHIBIT G-154

U. S. v. BETHLEHEM SHIPBUILDING CORPORATION

Description of Graph

1. Approximate probable cost of a tanker of 9100 D. W. T. was determined as follows:

(a) By applying to the cost of material in what was known under the Company's accounting system as Job 12, comprising in general the structural hull of the vessel as reported on Hull 253, to wit, $150,000, an equation factor of 2.66, producing a figure of $399,000. The equation factor was determined as follows: delivered cost of steel plates for Hull 253, $135. base per hundred pounds; estimated delivered cost of steel plates, including estimated increase of 10 cents over current delivered cost of plates, $3.59 base per hundred pounds; $3.59 ÷ 1.35 = 2.66.

(b) By applying to the cost of the remaining material on Hull 253 as reported, to wit, $239,000, an equation factor of 1.75, producing a figure of $418,000.

(c) By applying to the direct labor cost of Hull 253, reported as $326,000, an equation factor of 1.68, produced by dividing the average hourly earnings of direct labor on such Hull (38.75¢) into estimated earning rate under Navy Yard rates, which the Company had then been directed to put into effect at its East Coast Yards (50¢) and multiplying result by 1.30 (the addition of 30% being to cover increased

cost resulting from inefficiency of labor,) resulting in a figure of $548,000.

(d) By addition to the foregoing of 60¢ of the estimated direct labor cost as thus determined to cover the cost of plant operating expenses and administrative and general expenses including depreciation, taxes and insurance, producing a figure of $329,000.

(e) By adding to the sum of the foregoing items ($1,694,000) 10% for equipment which the contractor would be required to furnish and which on Hull 253 was furnished by the owner, for special equipment required by the Government, such as armed guard equipment and war zone requirements, and for contingencies, producing a figure of $1,863,000.

2. To determine the approximate probable cost of a tanker of 14,950 D. W. T., corresponding to Hulls 158 and 159, which were of recent construction, the same equation factors were applied to the cost of material and labor as reported for these hulls, and the same percentage additions made for plant operating expense, etc., equipment and contingencies. Labor and material cost as reported for these hulls were approximately the same per ton of light weight of ship as on Hull 253. The equation factors were applied to the following reported items of cost: $267,000 for materials on Job 12, $328,000 for other materials and $451,000 for labor cost. The approximate probable cost so determined was $2,736,000.

3. Approximate probable cost of tankers of other sizes to be built in East Coast Yards was de-

termined by curve drawn throught the two spots thus fixed.

4. Approximate probable cost of tankers to be constructed in West Coast Yards was estimated to be approximately 5% higher than for the construction of the same size and type of ships in the East Coast Yards, corresponding curve plotted on the graph being the line marked "(Tankers) West—East plus 5%".

5. It was estimated that the cost of a tanker of 10,000 D. W. T. would be about 15% more than the cost of a cargo vessel of the same tonnage, and that the cost of a tanker of 15,000 D. W. T. would be about 10% more than the cost of a cargo vessel of the same tonnage. The points representing this differential in cost were spotted on the graph from the line representing East Coast tankers and through such points the line marked "Cargo East" was constructed. From this line by an allowance of 5% for increased cost on the West Coast the line marked "Cargo West—East plus 5%" was constructed.

EXHIBIT G-155

In November of 1917, Mr. Harry Brown, who is the technical manager of the Bethlehem Shipbuilding Corporation, was informed by Mr. Powell that the Corporation would be expected to build ships for the Fleet Corporation and was instructed to prepare form estimates on approximate cost. At the time, neither Mr. Brown nor Mr. Powell knew

exactly what type or size of vessels they would be expected to build, but on the assumption that they would be expected to build tankers and cargo ships, Brown set about to arrive at some basis for estimating the probable cost of a tanker or cargo ship of any size which might be ordered.

As the basis of his estimate he took the cost on Hull 253 which was a 9,100 ton tanker which had recently been completed at the Fore River yard.

He ascertained from the Accounting Department that the cost of the material in Hull 253 was approximately $389,000, of which approximately $150,000 was in what is known as Job 12, which comprises a structural hull and the bulk of which is steel plates.

The average delivered price of plates that went into Job 12 was 1.35 base. The War Industries Board price for plates up to January 1, 1918, was 3.25 base, f. o. b. Pittsburgh. The current freight rate from Pittsburgh to Fore River was 24c. To this figure Brown added 10c to take care of the probable increase in freight rates and increased cost of delivery, making a delivery price of 3.59 which is 2.66% of the delivered price of steel plates which went into Hull 253. Applying this percentage, he estimated the material cost of Job 12 for a 9,100 ton tanker to be built during 1918, at $399,000.

The recorded cost of the material other than Job 12 on Hull 253 was approximately $239,000.

To arrive at an estimate of the probable cost of material other than Job 12, he obtained from the Purchasing Department information as to the current prices on some of the major items and made a

comparison of current prices with the prices of corresponding items in Hull 253. On the basis of this information and taking into consideration the difference in cost of steel, he arrived at the factor of 1.75. Multiplying $239,000 by 1.75 gave a figure of $418,000 as the estimated cost of material other than Job 12, or a total estimated cost of material of $817,000.

The next item which he considered was labor cost. He ascertained that the average hourly earnings of direct labor on Hull 253 was 38.75 per hour. He estimated that the average earning rate under the Navy Yard scale would amount to 50c per hour, or an increase of 29% over the earning rate of direct labor on Hull 253. To this he added 30% as an allowance for anticipated decrease in efficiency and using these figures he obtained the following equation: .50 cents (Navy Yard Rates) divided by 38.75 (the rate on Hull 253) x 1.30 (the factor of decreased efficiency) = 1.68. The total direct labor cost on Hull 253 was $326,000. Applying to this, the factor 1.68 gave the figure of $548,000 as the estimated direct labor cost on a similar ship. He says that Bethlehem was instructed in November to put into effect the Navy Yard rate at the Fore River Yard.

The next item considered was plant operating expense, administrative and general expense, including depreciation, taxes and insurance. In arriving at an operating percentage to cover these items he took into consideration, on the one hand, that the percentage of administrative and general expense would decrease as direct labor increased, but that percentage of plant operating expense would not decrease in the same proportion. My impression is

that past experience had shown that plant operating expense, inclusive of administrative, selling and general and inclusive of taxes, depreciation and insurance at Fore River, had averaged about 65% of the direct labor cost. Taking into consideration the factors above mentioned, Brown used a figure of 60% of direct labor cost to cover plant operating expense together with administrative and general expense, including taxes, insurance and depreciation. Applying this percentage to the direct labor cost of $548,000, gave a figure of $329,000 as the estimated cost of these items, which added to the figures previously given, gave a total of $1,694,000 as representing the estimated cost of material, labor, operating expense and overhead for a 9,100 ton tanker similar to Hull 253.

These figures did not include equipment supplied by the owner on Hull 253, such as hotel equipment, navigating outfit nor special equipment required by the Fleet Corporation, such as armed guard equipment and war zone requirements. To cover these items and to make allowance for other contingencies, he added a flat 10% making a total estimated cost of $1,863,000. (This is the item noted on the diagram as the 10% contingent).

To arrive at the estimated cost of a tanker of another size, he took Hulls 158 and 159 which had recently been completed at Sparrows Point, each being 14,950 ton tankers. He ascertained that the labor and material cost per ton of light weight of a ship were approximately the same on Hulls 158 and 159 at Sparrows Point as on Hull 253 at Fore River and he accordingly applied the same factor which he had applied to Hull 253, which gave him an approximate cost for labor, material and operat-

ing expense, etc. of $2,488,000, to which he added 10% for contingencies, including armed guard, etc., making a total of $2,736,000.

Having ascertained the estimated cost of two tankers of different sizes, he constructed a chart by putting down a point to indicate the cost of a 9,100 ton tanker and another point to indicate the cost of a 14,950 ton tanker and by drawing a curve between these two points, he added a curve which gave him an approximate cost on a tanker of any size built on the East Coast.

To arrive at the cost of similar vessels on the West Coast, he assumed that labor rates were approximately 10% higher and that the delivered cost of steel was approximately 50¢ per cwt. more than on the East Coast (on account of Freight). On the basis of these estimates he concluded that the cost on the West coast would be approximately 5% higher than on the East coast and to represent the West coast cost he plotted a curve indicating the flat increase of cost of 5% over the cost on the East coast.

To arrive at the cost of a cargo vessel, he estimated on the basis of his experience that a tanker of 10,000 tons D. W. cost about 15% more than a cargo vessel of the same tonnage and that a tanker of 15,000 tons cost about 10% more than a cargo vessel of the same tonnage. Using these percentages, he plotted another curve representing the estimated cost of cargo vessels on the East coast and by adding to this a flat 5% another curve representing the estimated cost of cargo vessels on the West Coast.

EXHIBIT G-159

BETHLEHEM SHIPBUILDING CORPORATION, LIMITED
New York, N. Y.

October 25, 1928.

Mr. W. W. Robison,
15 Broad Street,
New York City.

Dear Mr. Robison:

With reference to your letter of October 11th, 1928 addressed to Mr. Geiss, of which a copy was sent me, calling our attention to a question raised by representatives of the Fleet Corporation as to a discrepancy between the quantity of plates and shapes for Job 12 for Hulls 253-4 mentioned in a memorandum from Mr. Schulze to Mr. Brecht on May 25, 1928, and the quantity appearing in a statement "Detail of Plates and Shapes Purchased" dated May 28th, 1928 which was Exhibit 1-A attached to my letter of June 22nd, 1928 and also Exhibit "E" attached to my letter of August 8th, 1928, we beg to state that an analysis of this subject shows that the weights given in Mr. Schulze' report to Mr. Brecht are the estimated weights taken from the schedules prepared in the drafting room whereas the weights contained in Exhibit "E", attached to my letter of August 8, 1928, is the gross invoiced weights of plates and shapes for Job 12 as taken from the records. This gross weight includes plates and shapes ordered for other miscellaneous purposes and which at the time they are ordered are charged into Job 12 and ultimately

directed to Job 12 as they are charged out against specific jobs.

We find that this correction, in the case of Hulls 253-4, amounted to 326,113 lbs. Deducting this from the 15,272,014 lbs. gross weight leaves a remainder of 14,945,901 lbs. as compared with the calculated schedule weight of 14,644,876 lbs. or a difference of 301,025 lbs. or about 2% of the estimated weight. This can be easily accounted for by the mill tolerances.

As a result of the above, the figures for Hulls 253-4 on Exhibit "E" should be modified. Also we find on this same exhibit in rechecking Hulls 244-5 and 268-9 a few discrepancies which we have corrected. These hulls have been also corrected for credits similar to that on Hulls 253-4 for plates and shapes transferred to other accounts.

A revised sheet, exhibit "E", dated October 25, 1928, is heretc attached.

There has been omitted from this sheet, figures for Hulls 1376-1381. The break-down for these Hulls slightly modifies the old Exhibit "E" and new exhibit is attached to my letter of this date which answers your letter of Sept. 25, 1928.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith,
Vice President.

REVISED EXHIBIT "E"

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

FORE RIVER PLANT

COMPARATIVE COST OF JOB 12 MATERIALS

Hulls 244-5, Hulls 253-4 and 268-9

244-5

	Weight		Amount
Plates and Shapes	14,785,433#	.0130	$193,115.39
			43,955.33
			$237,070.72

253-4

	Weight		Amount
Plates and Shapes	14,945,901#	.0152	$226,832.19
All other Material			78,919.05
			$305,751.24

268-9

	Weight		Amount
Plates and Shapes	14,764,471#	.0226	$335,087.31
All other Material			62,724.69
			$397,812.00

Quincy, Mass. 8-2-28.
Revised 10-25-28.

EXHIBIT G-160

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

October 2, 1918

To: Mr. Edward N. Hurley
From: Mr. Charles Schwab
Subject: Excessive profits shown by American Shipbuilding Company in recent report.

Last week Mr. Farr sent me a copy of the annual report of his Company showing the profits which they had made during the fiscal year ending June 30, 1918 to be, approximately, 80% net profit on their outstanding common stock after setting aside large sums for war taxes and a moderate amount of depreciation.

I immediately sent for Mr. Farr and demanded that he consent at once to a reduction in price on all of his contracts. He claimed that the large profits were made out of the commandeered ships and that only a few of his direct contract ships had been completed and delivered during the fiscal year covered by the report. I pointed out that this argument had little weight because his contract ships were more expensive to us than the commandeered ships and that his material and labor protections were such that very likely during the coming year his Company would make a great deal more than they did during the past year. His Company has contracts for a total of 176 ships in addition to 32 commandeered ships. The total program exceeds 675,000 tons. If the shipbuilding company were to

make as much per ton as they, apparently, made during the preceding year they would have a net profit of something in excess of $20,000,000 on outstanding common stock issue of about $7,600,000. It is Mr. Farr's expectation that the entire program will be completed before the end of 1919.

The price fixed in the contracts between the American Shipbuilding Company and the Fleet Corporation was agreed to only after extended negotiations and as to the last contract made in May, 1918, the price was fixed after extended conferences not only with Mr. Farr but with all of the other lake shipbuilders and was consented to by me only upon the assurance by all of them that the price was a reasonable one.

Mr. Farr demurred at making any reduction so that, acting on Mr. Cuthell's advice, I told him that we would amend all his contracts so as to limit his Company to what we considered to be "just compensation".

Mr. Farr then agreed that he would execute binding agreements modifying all his contracts so that in no event would his Company make in excess of 10% profit. All Federal taxes are to be paid out of the 10% profit. He likewise agreed that his Company would absorb all the $1,200,000 for plant extension which we approved in May and two-thirds of which we were to have absorbed in the price of the last contract ships.

I think that this readjustment is a fair one and that it will prove an object lesson to any other contractors who think that they can take advantage of us to obtain excessive prices for ships.

I figure that this reduction in price will save in the neighborhood of $12,000,000.

C. M. Schwab,
Director General.

EXHIBIT G-161

Feb. 7, 1918.

Plates and Shapes
For 26 Ships and 6 Tugs
Bethlehem Shipbuilding Corpn. Ltd.

Emergency Fleet Corporation,
United States Shipping Board,
Washington, D. C.

Attention Mr. F. E. Brown, Genl. Purchasing Officer.

Sirs:

Referring to the 21 Tankers, 2 Troop Ships, 3 Freighters and 6 Tugs recently awarded to this Company by yourselves, we beg to advise that we have placed orders with the Bethlehem Steel Company for all of the Plates, Structural Shapes and Bars within their limits of manufacture required for the 14 Vessels and 6 Tugs which will be constructed in our Eastern Yards, as follows:

Hull Plates	35,935 net tons)	At
Structural Shapes	7,484 net tons)	Government
Bars and Flats	357 net tons)	Prices

We will also require for these Hulls to be constructed in our Eastern Yards, in addition to the

above, the following approximate tonnages of Plates and Shapes which the Bethlehem Steel Company cannot manufacture, viz;

Hull Plates	3,685 net tons)	These Plates will be ordered on account existing firm contract reported to you in our letter dated Dec. 13, 1917. At Government Price.
Marine & Flange Steel Boiler Plates	3,565 net tons)	
Structural and Ship Shapes	9,309 net tons)	

For the 12 Tankers to be constructed in our Yards on the Pacific Coast, we will need approximately the following material, which we were advised by Mr. J. L. Replogle, Director of Steel Supply, should be procured from Western Mill in order to minimize transportation, viz;

Hull Plates	31,800 net tons	
Less tonnage to be ordered on account of existing firm contracts reported to you in our letter Dec. 13, 1917	3,200	
Balance to be provided for Western Shipment	28,600 net tons)	
Marine & Flange Steel Boiler Plates	3,000 net tons)	
Structural and ship shapes	16,380 net tons)	At Government Price
Bars and Flats	156 net tons)	

We enclose herewith a statement in detail for your guidance in distributing the tonnages to be supplied by mills other than the Bethlehem Steel Company, and will appreciate your early advices as to allotment decided upon so that specifications can be filed with the mills as soon as the complete data is available.

Yours respectfully,

Bethlehem Shipbuilding Corporation, Ltd.

Purchasing Agent.

BETHLEHEM SHIPBUILDING CORP., LTD.

Bethlehem, Pa.

Plates, Shapes and Bars required for 26 Ships and 6 Tugs for Emergency Fleet Corporation

All Figures Net Tons

	Ordered from Bethlehem Steel Co.							To be ordered from other mills						
To be built	Hull Nos.	Hull Plates	Struct-ural Shapes	Bars & Flats	Hull Plates	Marine Fing. B'lr.	& Steel Plates	Car-negie Tees	Car-negie Channel	Car-negie Bulb Angles	Car-negie H Sections	Car-negie Plain Angles	Phoenix Bulb Angles	Cambria Bulb Angles	Total Shapes Plates
Fore River:	1,376	6,600													
3 tankers	77		1,788	24	675	675	126	1,239							1,365
	78														
Harlan:	3,459														
3 Freighters	60	5,400	1,035		540	540	36	1,194	90	3					1,323
	61														
Harlan:	3,462														
3 Tankers	50	5,775	1,323	24	600	600	60	252	339	45	33	21	462		1,182
	51														
Sparrows Pt	4,190														
2 Troop Ships	81	10,000	2,300	270	1,000	400	40	1,800			200				2,040

Exhibit G-161

1867

To be built		Hull Nos.	Hull Plates	Struct-ural Shapes	Bars & Flats	Hull Plates	Marine Eng. B'lr.	& Steel Plates	Car-negie Tees	Car-negie Channel	Car-negie Bulb Angles	Car-negie H Sections	Car-negie Plain Angles	Phoenix Bulb Angles	Cambria Bulb Angles	Total Shapes Plates
Sparrows Pt:		4,177														
23 Tankers		78	7,200	900	39	750		750	420	1,425	1,200		150			3,195
		79														
Moore:		2,118														
6 Tugs		20	960	438		120		600						204		204
		2,123														
Total for 14 Ships and 6 Tugs—																
Atlantic Coast Yards			35,935	7,484	357	3,685		3,565	682	5,910	1,629	18	303	225	462	9,309
Will be applied against existing firm contract																
Pacific Coast	Union	Hull Nos.				21,800		3,000	1,680	5,700	4,800		4,200			16,380
Guards	Plant	5,257 to														156
	12	5,268														
	Tankers Incl.															
Tons will be applied against existing firm contracts 28,699 to be allotted.																

1868

Exhibit G-161

EXHIBIT G 63

PRICE, WATERHOUSE & CO.
First National Bank Building
San Francisco.

March 1, 1918.

To the President and Directors of the
Union Iron Works Company,
San Francisco, Cal.

Dear Sirs:

In accordance with instructions received we have examined the books and accounts of the Union Iron Works Company for the purpose of determining the amount of Administrative and General Expenses and Property Taxes incurred during the period from December 1, 1915 to December 31, 1917, and in this connection we have prepared and attach hereto (Exhibits "A" and "B") monthly summaries showing the various expenses included under this caption to October 31, 1917.

The amounts shown on these statements under the heading of "Bonuses" represent payments based on percentages of the profits earned before charging Depreciation and Inter-Company Administrative and General Expense. The bonuses and extraordinary expenses were paid to and distributed by Mr. McGregor, to which effect we have received his certificate.

The charge for Inter-Company expense for the month of December 1915 and for the year ending December 31, 1916 has been pro-rated monthly on

the basis of the annual charge made by the Bethlehem Steel Corporation and subsidiary companies for the years 1915 and 1916, while the Inter-Company expense for the ten months ending October 31, 1917 has, we understand, been pro-rated to this Plant on the basis of total Plant pay-roll as calculated at Bethlehem. This latter item is not yet on the books, which at present show charges aggregating $10,687.50 for Inter-Company expense during 1917.

Depreciation of Plant is based on a monthly proportion of the following amounts:

For year ending December 31, 1915	$175,000.00
For year ending December 31, 1916	250,000.00
For year ending December 31, 1917	455,000.00

We may mention that there is included in "Legal Expense" for the month of September 1917 a charge of $10,000.00 for services rendered by Messrs. Robinson, Robinson & Price in connection with construction and Dredging Contracts, etc., at Alameda Plant which might be considered as a Capital Expenditure.

For your information we have also prepared from records on file a summary (Exhibit "C") showing the amounts of (1) Total Plant Direct Labor (including labor charged to shop expense, construction, etc.) and (2) Direct Labor charged to manufacturing —being a part of and included in (1).

On Exhibit "D" will be found a summary showing (1) The actual shop expense incurred, (2) The shop expense charged to jobs by means of a percentage added to the direct labor cost, and (3) The amount by which this latter charge exceeded the actual shop expense. It will be noted that since October, 1917

Office and General Expenses are included with the Shop Expense, but Inter-Company Expenses and Depreciation are not included.

Further particulars in regard to these statements will be gladly furnished upon request.

Yours very truly,

(Signed) Price, Waterhouse & Company

Exhibit G-163

UNION IRON WORKS COMPANY

ADMINISTRATIVE AND GENERAL EXPENSES AND PROPERTY TAXES

FOR THE MONTH OF DECEMBER 1916 AND FOR THE YEAR ENDING DECEMBER 31 1916

	Month of December 1915	Year ending December 31 1916											Total for Year 1916
		January	February	March	April	May	June	July	August	September	October	November	December	
Salaries	$13,004.86	$12,978.76	$13,422.54	$18,787.11	$18,310.93	$16,050.13	$17,573.26	$17,002.72	$17,312.97	$16,981.60	$17,342.77	$18,280.84	$31,304.59*	$213,368.22
Printing & Stationery	506.90	737.67	538.53	2,325.12	1,371.90	1,019.93	1,113.42	816.54	314.68	1,738.34	1,328.80	1,130.81	1,999.85	14,629.49
Office Expense	2,115.45	1,148.34	1,077.14	822.21	2,279.28	729.99	3,780.37	1,825.74	3,333.52	1,437.84	3,491.09	1,974.81	3,531.17	25,320.50
Telephone & Telegraph	786.79	492.44	727.67	417.96	864.56	943.46	870.03	1,005.13	1,322.47	919.81	1,436.57	896.54	1,317.82	11,410.45
Travelling & Entertainment	2,744.22	1,116.53	1,665.63	1,704.62	2,232.79	3,059.97	1,210.92	3,811.53	2,098.54	981.62	1,582.86	6,123.20	5,116.06	31,194.07
Legal Expense	210.59	659.64	2,005.08	309.34	456.33	211.33	239.34	222.03	387.33	3,474.23	333.83	329.46	236.34	8,866.28
Rent	491.67	491.67	491.67	958.33	591.67	691.67	691.67	691.67	691.67	691.67	691.67	691.67	721.67	8,098.66
Insurance	1,011.93	587.60	587.60	1,419.60	1,003.60	1,003.60	1,003.60	1,003.60	1,003.60	1,003.60	1,003.60	582.10	1,399.40	11,401.50
Schemes	600.45	244.93	254.23	80.48	232.47	208.82	256.34	320.74	247.08	379.86	869.77	905.41	9,840.86	14,121.00
Bonuses	58,945.53	7,294.72	7,617.84	8,038.54	8,033.39	9,140.65	22,232.79	14,604.89	21,046.43	12,971.73	16,184.02	22,081.16	79,361.99	226,698.16
Royalties	45.00	4.65	3.65					40.00		70.00				118.30
	$80,483.39	$26,053.16	$28,575.50	$34,863.31	$35,377.91	$33,139.55	$48,971.74	$41,364.59	$47,950.29	$40,980.42	$46,254.78	$52,875.76	$130,929.54	$567,214.63
Advertising	253.93	343.72	228.72	163.72	251.72	45.38	274.10	115.84	353.68	180.60	199.37	115.00	1,072.70	3,344.95
Donations & Subscriptions	725.18	1,642.50	1,262.10	690.20	1,192.11	708.82	3,222.38	891.20	4,365.72	4,145.54	424.49	1,012.54	5,837.35	23,394.95
Extraordinary Expense	9,500.00	13,500.00	4,100.00	8,000.00	5,660.00	5,500.00	7,500.00	6,250.00	3,000.00	3,000.00	4,565.00	9,500.00	5,000.00	77,575.00
	$90,942.50	$41,539.38	$34,166.40	$43,717.23	$42,481.74	$39,393.75	$59,968.22	$50,621.63	$55,677.89	$48,176.76	$51,443.64	$63,503.30	$140,839.59	$671,529.53
Real Estate & Property Taxes	2,361.76	2,361.76	2,361.76	2,361.76	2,361.76	2,361.76	2,361.77	2,749.72	2,749.72	2,749.72	2,749.72	2,749.72	2,749.72	30,668.89
Inter-Company Expense	8,280.00	5,041.66	5,041.66	5,041.66	5,041.66	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	60,500.00
Depreciation	14,583.33	20,833.33	20,833.33	20,833.34	20,833.33	20,833.33	20,833.34	20,833.33	20,833.33	20,833.34	20,833.33	20,833.33	20,833.34	250,000.00
	$115,187.59	$69,776.13	$62,403.15	$71,953.99	$70,718.49	$67,630.51	$88,205.00	$79,246.35	$84,302.61	$76,801.49	$80,068.36	$92,128.02	$169,464.32	$1,012,698.42

* Includes $14,219.48 Christmas Bonus to Office and other Employees

Exhibit G-163

UNION IRON WORKS COMPANY

ADMINISTRATIVE AND GENERAL EXPENSES AND PROPERTY TAXES

FOR THE TEN MONTHS ENDING OCTOBER 31 1917

	January	February	March	April	May	June	July	August	September	October	Total for Ten Months
Salaries	$19,381.27	$18,657.76	$15,291.00	$17,055.57	$17,199.40	$17,968.67	$17,842.65	$21,113.59	$19,484.25	$ 8,357.50	$172,351.66
Printing & Stationery	2,108.31	1,320.06	1,043.54	2,001.54	1,416.20	1,307.27	1,334.02	1,429.35	2,651.98	44.05	14,656.52
Office Expense	1,837.84	2,933.01	1,314.78	3,864.12	1,049.56	954.31	1,555.76	1,792.06	2,841.66	293.06	18,376.68
Telephone & Telegraph	668.68	950.87	1,119.49	1,446.28	1,152.82	1,206.84	795.02	1,977.99	1,345.04	375.96	11,038.99
Travelling & Entertainment	2,132.36	1,843.09	1,280.12	3,029.05	6,701.08	813.05	2,301.55	4,877.03	813.46	5,470.08	34,260.85
Legal Expense	208.33	273.33	1,641.52	1,045.55	1,253.01	1,093.34	361.18	223.33	11,284.09		17,351.68
Rent	721.67	721.67	721.67	721.67	721.67	751.67	951.67	1,151.67	951.67	342.00	7,757.03
Insurance	896.88	896.88	896.88	896.88	896.88	896.88	896.88	896.88	896.88	896.88	8,968.80
Schemes	349.77	11,416.88	139.27	349.53	157.23	185.91	246.10	217.10	146.52		13,207.31
Bonuses	12,043.31	7,793.23	26,948.35	6,839.07	32,490.61	22,698.90	20,954.73	45,248.85	17,819.13	14,003.74	206,749.90
Royalties								3,100.00			3,100.00
	$40,348.42	$46,806.78	$50,396.62	$37,186.26	$63,033.48	$47,787.54	$52,239.56	$82,027.83	$58,235.68	$29,783.25	$507,849.42
Advertising	1,147.50	140.50	147.50	205.00	140.50	229.00	215.00	211.50	435.50	352.50	3,224.50
Donations & Subscriptions	1,100.77	952.37	1,495.93	750.33	5,734.23	12,662.69	1,592.32	819.96	3,387.63	50.92	28,547.15
Extraordinary Expense	3,000.00	9,900.00	5,000.00	10,000.00	5,000.00	7,000.00		7,000.00	10,000.00	6,500.00	63,400.00
	$45,596.69	$57,799.65	$57,040.05	$48,141.59	$73,913.21	$67,679.23	$54,046.88	$90,059.29	$72,057.81	$36,686.67	$603,021.07
Real Estate & Property Taxes	2,749.72	2,749.72	2,749.72	2,749.71	2,749.71	2,749.71	3,696.22	3,696.22	3,696.22	3,696.21	31,283.16
Inter-Company Expense	11,594.98	13,307.78	21,051.20	9,248.53	23,216.15	8,930.31	22,053.45	15,072.92	7,217.89	14,732.89	146,426.10
	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	379,166.70
	$97,858.06	$111,773.82	$118,757.64	$98,056.50	$137,795.74	$117,275.92	$117,713.22	$146,745.10	$120,888.59	$93,032.44	$1,159,897.03

EXHIBIT "C"

UNION IRON WORKS COMPANY

Summary of Direct Labor Charges before adding percentage to cover Shop Expense

		Total Plant Direct Labor	Direct Labor charged to Manufacturing
1915	December	$ 287,148.58	$ 252,387.10
1916	January	$ 258,529.09	$ 228,086.40
	February	300,599.34	266,530.61
	March	388,294.73	350,876.33
	April	499,448.83	451,654.54
	May	383,117.46	341,062.53
	June	452,491.31	409,199.94
	July	591,770.15	526,195.77
	August	515,575.76	457,710.20
	September	504,734.09	451,936.77
	October	673,186.63	594,535.85
	November	589,546.27	525,161.70
	December	718,610.79	642,509.86
		$5,875,904.45	$5,245,370.50
1917	January	$ 602,634.79	$ 547,124.84
	February	593,477.39	538,158.58
	March	663,540.56	616,855.97
	April	854,715.80	791,691.06
	May	683,606.59	630,902.56
	June	682,343.20	636,695.52

	Total Plant Direct Labor	Direct Labor charged to Manufacturing
July	886,380.45	824,921.77
August	976,374.49	908,650.83
September	335,562.57	312,375.49
October	891,618.79	844,680.74
	$7,170,254.63	$6,652,057.36

EXHIBIT "D"

UNION IRON WORKS COMPANY
Bethlehem Shipbuilding Corporation, Limited
(Union Plant)

Summary of Overhead Expense

1915	Expenses	Amount added to Direct Labor	Amount over or under charged
December	$ 84,234.68	$ 94,708.31	$ 10,473.63
1916			
January	$ 76,172.29	$ 89,270.62	$ 13,098.33
February	77,875.97	97,203.39	19,327.42
March	77,310.85	110,494.19	33,183.34
April	108,203.09	127,194.83	18,991.74
May	81,089.79	96,074.00	14,984.21
June	95,646.51	130,505.47	34,858.96

	Expenses	Amount added to Direct Labor	Amount over or under charged
July	119,034.51	161,569.73	42,535.22
August	113,800.95	128,217.88	14,416.93
September	117,296.46	124,331.19	7,034.73
October	137,624.23	179,370.80	41,746.57
November	115,116.41	147,375.18	32,258.77
December	144,239.05	160,538.66	16,299.61
	$1,263,410.11	$1,552,145.94	$ 288,735.83
1917			
January	$ 126,311.71	$ 136,660.48	$ 10,348.77
February	122,697.71	149,219.92	26,522.21
March	127,112.34	144,554.73	17,442.39
April	170,025.44	196,166.66	26,141.22
May	139,290.66	154,382.95	15,092.29
June	162,091.18	150,725.87	11,365.31 (Red)
July	190,222.95	213,743.12	23,520.17
August	204,406.06	230,164.18	25,758.12
September	106,727.76	83,611.03	23,116.73 (Red)
*October	256,892.20	246,628.74	10,263.46 (Red)
*November	332,442.49	351,120.45	18,677.96
*December	650,329.92	389,789.76	260,540.16 (Red)
	$2,588,550.42	$2,446,767.89	$1,141,782.53 (Red)

*Includes Shop Expenses, also Office and General Expenses and Bonuses but not including Depreciation.

EXHIBIT G-170

Law Offices of
EVANS, BAYARD & FRICK
1335-43 Land Title Bldg.,
Philadelphia.

May twenty-second, 1929.

Bethlehem v. Shipping Board

Dear Mr. Brown:

Responsive to your subpoena I hand you the following data:

1. Statement of actual cost of labor, material and operating expenses separated by jobs for Hulls Nos. 129, 130, 132, to 139, inclusive, 140 to 149, inclusive, 154, 162 to 169 inclusive, at Union; Hulls Nos. 251 to 255, inclusive, 264, 265, 267, 268, 269, 272, 273, 297, 298 at Fore River; Hulls Nos. 115 to 117, inclusive at Moore; 158, 159, 163, 164, 167, 169, 170, 172, 173, 174, 175 at Sparrows Point; 441-442, 445, 446, 447, 448, 449, 453, to 459, inclusive at Harlan.

The above information is submitted to you in the form of summaries and with the exception of hulls Nos. 129 and 130 and 132, 133, 136 to 139 at Union we have the original sheets here from which the figures were taken, and if you desire to, we will be glad to submit them to you for verification. In the

case of Union hulls Nos. 129 and 130 I understand the original account is in a bound volume with the accounts of other hulls with which you are not concerned, and this was not forwarded presumably because of the bulk.

In the case of Hulls Nos. 132, 133, 136 to 139 I am informed that the original ledgers have been lost and the information which is furnished herewith has been compiled from reports previously furnished by the plant.

2. State of administration, selling and general expenses and depreciation for each plant for the years 1916, 1917 and 1918.

3. Estimates as follows: Hulls Nos. 253, 254, 251 Fore River; Nos. 441, 442, 446, 448, 453, 454, 455, 456, 457, 458 at Harlan. I expect to receive in tomorrow's mail, and will let you have, some additional estimates for Fore River. We have not been able to locate any estimates for any of the hulls specified at any of the other yards.

4. Comparative statements of estimated cost and actual cost on Hulls Nos. 251, 253, 254, 255, 264, 265, 267 and 268 and 269 at Fore River. These are the only records of this kind which we have been able to locate at any of the plants.

I understand that the particular sheets which we have been able to locate and which are furnished herewith do not necessarily give the completed returned costs.

As some of these papers are original records of the Company, I will ask you to be sure to see to it that they are returned to me in due course. The sum-

maries of cost which have been compiled you may retain.

Yours very truly,

Ralph B. Evans

Joseph J. Brown, Esq.,
1535 Land Title Building,
Philadelphia, Pa.

FORE RIVER SHIPBUILDING CORPORATION

Admin., Selling & Gen'l Expense

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
1916	January	$13,484.26		
	February	14,447.76		
	March	29,768.12	$84,750.00	
	April	18,475.68		
	May	21,273.19		
	June	31,723.95	84,750.00	
	July	26,319.57		
	August	50,376.00		
	September	20,123.00	94,750.00	
	October	15,583.76		
	November	12,023.06		
	December	32,125.18	94,750.00	$250,000.00
	Total	285,723.53	$359,000.00	$250,000.00
1917	January	14,306.11		
	February	19,853.31		
	March	14,584.65		
	April	16,350.03	31,500.00	
	May	22,173.91		
	June	18,761.20	31,500.00	
	July	21,469.96		

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
	August	16,474.53		
	September	29,848.45	31,500.00	
	October	25,331.08		
	Bethlehem Shipbuilding Corp.—Fore River			
	November	27,510.83		
	December	37,326.51		
	Total	$263,990.57	$94,500.00	$200,000.00
1918	January	$43,259.09		
	February	40,942.92		
	March	83,864.29		
	April	62,263.57		
	May	66,530.28		
	June	92,961.75		
	July	73,244.87		
	August	85,854.59		
	September	107,970.30		
	October	124,533.37		
	November	153,920.19		
	December	176,490.72		
	Total	$1,111,835.94		$341,000.00

5-17-29

SAMUEL L. MOORE & SONS CORPORATION

Admin. Selling & Gen'l Expense

1916	January	$6,121.42
	February	4,471.80
	March	4,632.02
	April	6,163.99
	May	5,410.89
	June	5,877.45

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
	July	8,678.60		
	August	7,242.37		
	September	6,952.41		
	October	6,669.53		
	November	5,841.50		
	December	6,617.23		
	Total	$74,679.21		$70,000.00
1917	January	$5,635.01		
	February	6,711.26		
	March	7,497.61		
	April	6,927.03		
	May	7,224.18		
	June	6,694.79		
	July	8,243.29		
	August	8,043.07		
	September	6,045.86		
	October	5,926.42		
	Bethlehem Shipbuilding Corp.—Moore Plant			
	November	5,084.92		
	December	12,106.44		$55,000.00
	Total	$86,139.88		$65,300.00
1918	January	$2,380.48		
	February	6,210.55		
	March	4,970.65		
	April	7,132.31		
	May	8,043.66		
	June	7,241.58		
	July	6,938.69		
	August	5,834.84		
	September	10,791.19		
	October	16,847.80		

Year	*Month*	*Direct*	*Inter-Company Depreciation*	
	November	38,063.21		
	December	17,976.38		
	Total	$132,431.38		$85,000.00

5-17-29

HARLAN & HOLLINGSWORTH SHIPBUILDING CORPORATION

Admin. Selling & Gen'l Expense

1916	January	$9,921.79		
	February	9,015.99		
	March	10,987.54	$375.00	
	April	10,295.42	375.00	
	May	6,609.56	375.00	
	June	6,767.56	750.00	
	July	6,823.46	750.00	
	August	6,864.30	750.00	
	September	6,864.30	1,750.00	
	October	7,278.19	1,750.00	
	November	8,899.23	1,750.00	
	December	7,303.38	2,750.00	
	Total	$97,405.88	$11,375.00	$160,000.00
1917	January	$6,310.07		
	February	7,510.28		
	March	7,604.52	187.50	
	April	7,894.43		
	May	6,544.12		
	June	8,012.46	187.50	
	July	6,722.91		
	August	6,234.72		

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
	September	6,044.50	187.50	
	October	6,092.23		
	Bethlehem Shipbuilding Corp.—Harlan Plant			
	November	$3,065.41		
	December	13,678.72		
	Total	$85,713.37	$562.50	$177,500.00
1918	January	$5,884.12		
	February	11,332.37		
	March	7,686.73		
	April	18,601.31		
	May	15,989.46		
	June	24,071.21		
	July	14,922.33		
	August	21,486.67		
	September	26,250.16		
	October	61,983.07		
	November	61,070.23		
	December	31,599.34		
	Total	$300,877.40		$192,000.00

5-17-29

BETHLEHEM STEEL COMPANY

SPARROW'S POINT SHIPBUILDING PLANT

Admin., Selling & Gen'l Expense

1916	July	$23,055.78	
	August	18,857.68	
	September	16,118.47	
	October	26,478.55	
	November	19,205.72	
	December	32,614.61	
	Total (Mos.)	$136,330.81	$150,000.00

Year	*Month*	*Direct*	*Inter-Company. Depreciation*
1917	January	$8,739.42	
	February	14,458.73	
	March	18,573.65	
	April	23,302.23	
	May	6,633.79	
	June	14,425.85	
	July	13,734.93	
	August	17,378.04	
	September	20,558.07	
Bethlehem Shipbuilding Corp.—Sparrow's Point Plant			
	October		
	November	11,618.86	
	December	36,803.09	
	Total	$186,226.66	$234,943.34
1918	January	$7,312.19	
	February	15,778.45	
	March	9,926.82	
	April	21,665.95	
	May	58,409.33	
	June	67,925.90	
	July	46,763.36	
	August	22,543.41	
	September	31,019.41	
	October	63,832.81	
	November	82,863.40	
	December	87,892.86	
	Total	$515,933.89	$335,000.00

5-17-20

UNION IRON WORKS COMPANY

Admin., Selling & Gen'l Expense

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
1916	January	$42,039.38		
	February	34,666.40		
	March	44,217.23	$8,250.00	
	April	42,981.74		
	May	39,893.75		
	June	60,468.22	8,250.00	
	July	51,121.63		
	August	56,177.89		
	September	48,676.76	22,000.00	
	October	51,943.64	5,068.45	
	November	63,747.60		
	December	140,839.59	16,931.55	
	Total	$676,773.83	$60,500.00	$250,000.00
1917	January	45,596.69		
	February	57,799.65		
	March	57,040.05		
	April	48,141.59	3,562.50	
	May	73,913.21	3,562.50	
	June	67,679.23	7,125.00	
	July	54,046.88	7,125.00	
	August	90,059.29		
	September	66,813.51	24,208.89	
	October	36,686.67		
Bethlehem Shipbuilding Corp.—Potrero & A La Meda Works				
	November	38,407.26		
	December	29,513.31		
	Total	$855,697.34	$45,583.89	$325,000.00

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
1918	January	$44,083.48		
	February	96,200.59		
	March	83,552.12		
	April	85,473.61		
	May	106,088.58		
	June	122,925.29		
	July	110,949.02		
	August	99,641.81		
	September	123,414.76		
	October	175,222.95		
	November	150,859.06		
	December	436,268.63		
	Total	$1,635,279.90		$462,000.00

5-17-29

UNION IRON WORKS DRY DOCK COMPANY

Admin., Selling & Gen'l Expense

1916	January	$ .47	
	February	11.50	
	March	48.38	
	April	79.42	
	May	17.36	
	June	11.27	
	July	32.16	
	August	55.41	
	September	53.54	
	October	195.56	
	November	32.48	
	December	22.71	
	Total	$560.26	$60,000.00

Exhibit G-170

Year	Month	Direct	Inter-Company Depreciation
1917	January	18.61	
	February	73.64	
	March	138.35	
	April	67.91	
	May	35.93	
	June	6.38	
	July	31.85	
	August	13.16	
	September	74.18	
	October	172.61	
	Bethlehem Shipbuilding Corp.—Hunters Point		
	November	3,015.89	
	December	2,195.63	
	Total	$5,831.38	$50,000.00
1918	January	783.51	
	February	735.68	
	March	786.43	
	April	2,360.79	
	May	5,351.76	
	June	7,230.97	
	July	3,870.71	
	August	4,466.05	
	September	353.44	
	October	2,078.06	
	November	30,613.30	
	December	14,066.24	
	Total	$72,696.94	$75,000.00

EXHIBIT G-175

September 7th, 1928.

Ralph B. Evans, Esq.,
1335 Land Title Building,
Philadelphia, Penna.

Re: U. S.-Bethlehem Litigation

Dear Mr. Evans:

The statement given to us by Mr. Brown in the above matter recites that the delivered cost of steel plates for Hull 253 was $1.35 base per hundred pounds.

In Exhibit "E" which accompanied Mr. Smith's letter to Mr. Robison of August 8th, 1928, it appears that the average cost of plates and shapes for Hull 253 was $1.51 per hundredweight. A similar price appears in Exhibit "A-1" accompanying Mr. Smith's letter to Mr. Robison dated June 22nd, 1928.

We would like to have an explanation of this apparent discrepancy as soon as possible if you consider it proper to furnish the same.

We would also like to have a breakdown of the weights and prices referred to in Exhibit "E" into plates and shapes with respect to Hulls 253 and 254, as the figures furnished by Mr. Schulze in his letter to Mr. Brecht under date of May 25th, 1928 are apparently inaccurate and the invoices which have been submitted to us for examination are not complete.

Very truly yours,

J. J. Brown.

EXHIBIT G-176

Land Title Building
Philadelphia, Pa.

September 21, 1928.

Ralph B. Evans, Esquire,
Land Title Building,
Philadelphia, Penna.

Bethlehem Litigation

Dear Sir:

In the information furnished by you on August 8th and June 22d, 1928, in referring to Job 12, the breakdown is shown of "Plates and Shapes" and "All Other Material". In the invoices which have been submitted to you, relating to Hulls 253-254, there is a Binder, "Exhibit C", which bears the heading "Purchased Material, Plates, Shapes, Castings". There are a few invoices covering forgings and castings, totaling approximately $12,000. Information is requested as to whether or not these forgings and castings are included in all of your data as "Plates and Shapes" or whether they are included in "All Other Material".

Information is also desired as to the major items comprising the "Other Material" included in Job 12, and whether this "Other Material" includes bars, rivets or rivet-rounds, stern frames, stern tubes, stems, rudder posts and arms, bolts and deck stanchions.

If any of the above enumerated items are not included in the "Other Material", information is

desired as to whether they are included in "Plates and Shapes".

Information is also desired as to whether the Fore River plant purchased their rivets or manufactured them at the time Hulls 253-254 were constructed and at the time when Mr. Brown made his estimate. There are no invoices included in those sent to you covering bars, rivets, or rivet rounds.

In the information furnished by you on August 8, 1928, the total weight of plates and shapes charged to Hulls 253-254 was given as 15,272,014 pounds. The information furnished by you on June 22, 1928, contains a communication from Mr. Schulze giving the total gross weight for each Hull, 253 and 254, of plates and shapes on Job 12, or its equivalent, as 7,322,438 pounds, divided between plates and shapes, as follows:

	One Hull	*Two Hulls*
Plates	5,198,420 lbs.	10,396,840 lbs.
Shapes	2,124,018 lbs.	4,248,036 lbs.
Total	7,322,438 lbs.	14,644,876 lbs.

These figures disclose a deficiency of 627,138 pounds under the figures of August 8th. A summary of the invoices discloses that there are invoices for 10,005,075 pounds of plates and 2,699,586 pounds of shapes, or a total of 12,704,661 pounds for Hulls 253-254. It would appear, therefore, that there are no invoices covering approximately 2,500,000 pounds, if the figures submitted by you on August

8th are the correct figures. There are nearly 2,000,000 pounds short, if the figures submitted by Mr. Schulze are correct. Information is desired as to which of the two figures are to be taken as the correct requirements for Hulls 253-254.

Information is also desired as to what comprises the bulk of the deficiency disclosed by the invoices. Do these deficiencies represent mainly shapes and, if so, what was the character of the shapes and what unit prices were charged against Hulls 253-254, and what was the freight charged against these hulls for the items. If the deficiencies represent plates, what were the unit prices and freights paid for the same.

It is requested that the total number of pounds of each of plates, shapes, bars and rivets charged to Hulls 253-254, 244, 245, 268-269 and the Hulls covered by Contracts 183 and 299 be given and the base unit price of the plates, shapes, bars and rivets purchased for the above hulls be given. It is also requested that the unit freight paid on these materials and charged to the different hulls be given. It is requested that the information asked as to the hulls covered by Contracts 183 and 299 be segregated by contract, if possible.

It is also requested that the amounts, including unit prices and freight, paid for each of the major items included in material other than shapes and plates in Job 12 be given us for the hulls and contracts mentioned above.

It is also requested that we be given as far as possible a list of the items, with their prices, considered by Mr. Brown in arriving at his factor of

increase for material other than that covered by Job 12.

Very truly yours,

Ralph H. Hallett.

EXHIBIT G-177

September 25, 1928.

U. S. v. Bethlehem Shipbuilding Corporation, Ltd.

Dear Mr. Evans:

The following is in reply to inquiries and requests for additional information contained in letters from Mr. Joseph J. Brown to you dated September 7, 1928 and September 21, 1928, copies of which you sent me on the same dates.

1. Inquiry in letter of September 7, 1928, as to why the average cost of plates and shapes, given as $1.51 in Exhibit E. accompanying Mr. Smith's letter of August 8, 1928, and in Exhibit A-1 accompanying his letter of June 22, 1928, does not conform to the delivered base price of $1.35 for plates mentioned in the description of the graph.

Extras added to the base price of plates and the price of shapes, with the extras thereon, account for the greater part of this difference. Variations in delivered price, depending on whether the steel was consigned to Boston or to Fore River would also account for a small part of it.

2. Request in letter of September 7, 1928, for breakdown of weights and prices referred to in Ex-

hibit E into plates and shapes with respect to Hulls 253 and 254.

This could only be done from the invoices which have been furnished. As a part of the Carnegie Steel Company invoices are missing (see 6 below) there is no way in which an exact breakdown can be made but from the Carnegie Steel Company invoices of which photostatic copies have been furnished and the Bethlehem Steel Company invoices for Hulls 253 and 254, which were sent to you on August 8, 1928, it should be possible for Mr. Brown's assistants to make a breakdown which will be approximately correct.

3. Inquiry in letter of September 21, 1928, whether forgings and castings are included in "plates and shapes" or in "all other material."

Forgings and castings are included in "all other material."

4. Inquiry in letter of September 21, 1928, as to major items comprising "other material included in Job 12."

"Other material in Job 12" includes all materials charged to that job other than plates and shapes. The nature of such other materials can readily be derived from the schedule of items included in Job 12, which was Exhibit A accompanying Mr. Smith's letter of August 8, 1928. They include bars (if any), rivets, stern frame, stern tube, stem, rudder posts and arms, bolts and deck stanchions, which are the items specifically mentioned in this inquiry.

5. Inquiry whether rivets were purchased or manufactured at the Fore River plant.

Rivets were purchased both for Hulls 253 and 254 and when Mr. Harry Brown made his graph of probable cost.

6. Inquiry whether total weight of plates and shapes for Hulls 253 and 254 as furnished on August 8, 1928 (15,272,014 lbs.) or that appearing in a communication from H. H. Schulze to H. A. Brecht, accompanying Mr. Smith's letter of June 22, 1928, is to be taken as showing the requirements of plates and shapes for these hulls, and as to the nature of the materials covered by missing invoices.

Mr. Schulze's figures were, as his communication indicates, based on estimates of the material required, furnished by the Hull Drawing Room. The more recent figure (15,272,014) was taken from records of plates and shapes actually purchased for or charged to the ships and shows approximately the weight of plates and shapes entering into the cost. Invoices have heretofore been furnished covering plates and shapes for Hull 253 amounting to 7,101,648 lbs. and for Hull 254 amounting to 7,096,301 lbs. or 14,197,949 lbs. for both. The figure mentioned in Mr. J. J. Brown's letter of September 21, 1928, of 12,704,661 lbs. as the amount covered by the invoices is apparently incorrect. Examination of accounts payable records in connection with these hulls shows that Carnegie Steel Company invoices are missing covering, for Hull 253, 537,037 lbs. of shapes and/or plates amounting to $7,253.92, and for Hull 254, 537,036 lbs. of shapes and/or plates amounting to $7,253.91. As has been said above, we are advised that there is no way of telling how much of these latter amounts represent shapes and how much plates.

7. Inquiry as to total number of lbs. each of plates, shapes, bars and rivets charged to Hulls 253-254, 244-245, 268-269 and hulls covered by Contracts 183 and 299, with base unit prices of each and unit freight paid thereon;

Also,

inquiry as to amounts, unit prices and freight paid for each of the major items included in material other than plates and shapes in Job 12 for the same hulls.

What we have said above covers these inquiries so far as plates and shapes for Hulls 253 and 254 are concerned. As to plates and shapes for Hulls 244-245 and 268-269, the data requested can be derived only from the invoices which were sent to you on August 8, 1928. The same is true regarding castings and forgings in Job 12 for all these hulls. Whether the information requested can be furnished in respect of bars and rivets and of any other major items in Job 12 other than plates and shapes for all the hulls mentioned, and also in respect of plates, shapes, castings and forgings for the hulls under Contracts 183 and 299, we are not now advised. We have sent an inquiry regarding this to our clients and will reply further regarding it on receiving definite information from them.

8. Request for list of items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12.

No record of such items and prices has been preserved.

I am sending you an additional copy of this letter so that you may furnish it to Mr. Brown.

Very truly yours,

W. W. Robison.

Ralph B. Evans, Esq.,
Land Title Building,
Philadelphia, Pa.

EXHIBIT G-178

(Copy)
Bethlehem Pa.

April 19, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.
Attention: Mr. Charles Piez
Vice-President and General Manager

Gentlemen:

Referring to the letter from the United States Shipping Board, Emergency Fleet Corporation, dated January 5, 1918 relative to additional tonnage to be constructed at the various plants of the Bethlehem Shipbuilding Corporation, Ltd., and to our letter of December 19, 1917 and to our letter of December 13, 1917—all in relation to the above subject:

We beg to invite attention to the following paragraph of our letter of December 13, 1917, herewith quoted:

"This Company has contracts with the Midvale Steel & Ordnance Company, dated March 29, 1917, and the Central Iron & Steel Company dated March 19, 1917, for a total of 6850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at six cents (6¢) per pound for the steel plates and fifteen cents (15¢) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant Vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely six cents (6¢) for steel plates and fifteen cents (15¢) per pound for boiler steel."

At conferences between a representative of our Company and Mr. Radford of the United States Shipping Board, Emergency Fleet Corporation, it was agreed that the steel for which we had definite contracts with the Midvale Steel & Ordnance Company and the Central Iron & Steel Company will be utilized in the construction of the vessels, ordered by the Fleet Corporation in its letter of January 5, 1918 herein referred to. The increased cost involved over and above the Government prices to be distributed amongst the vessels at the various plants in proportion to the amount of tonnage required for the contracts at each plant and since nothing in the contracts covers the prices which we are to pay for steel, and since it was agreed the steel for which we had contracts would be utilized,

we respectfully request that instructions be issued to the departments of the United States Shipping Board, Emergency Fleet Corporation covering this item, in order to avoid any confusion between the Shipping Board representatives and our representatives at the various plants.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.

(Signed) H. Brown,
Technical Manager.

EXHIBIT G-207

Letterhead of
CRAVATH, DE GERSDORFF, SWAINE & WOOD

June 30, 1928

U. S. v. Bethlehem Shipbuilding Corporation, Ltd.

Dear Mr. Evans:

Supplementing Mr. Wood's letter to you of the 28th instant, I send you herewith, in duplicate, one copy for your files and one to be furnished to counsel for the Shipping Board, further papers in response to Mr. Brown's various requests for additional information, as follows:

Letter by E. W. Geiss to this firm, dated June 19, 1928,* giving information with respect to Hull No. 440 similar to that shown for other ships in the statement previously furnished entitled "General Characteristics, etc.".

Letter from H. G. Smith, Vice-President, to me, dated June 22, 1928,** with enclosure, giv-

ing the light weight of various vessels as taken from "Curve of Form" or "Dead Weight and Capacity Scale" plans.

Letter from H. G. Smith to me dated June 30, 1928,*** supplementing his letter of June 22, copies of which accompanied Mr. Wood's recent letters to you, and enclosing information with respect to the Harlan plant similar to that which accompanied the letter of June 22.

Very truly yours,

W. W. Robison

Ralph B. Evans, Esq.,
Land Title Building,
Philadelphia, Pa.

21
Encls.

* See Exhibit G-31 of this record.
** See Exhibit G-39 of this record.
***See Exhibits G-27 to G-30, inclusive, of this record.

EXHIBIT G-208

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Phila., Pa.

September 25, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
Bethlehem, Pa.

Attention Mr. Powell

Gentlemen:

Re: Estimated basis price on Troop Transports at Sparrows Point Plant and Liberty Shipyard.

The division of steel ship construction has concluded its work of estimating the cost of the troop transports. Its figures are as follows:

Sparrows Point Transports—	$3,950,000
Liberty Yard Transports—	4,100,000

Mr. Cox and myself have been asked by Mr. Piez, to discuss this matter with you so that an estimated basis cost, which will be mutually satisfactory, may be inserted in our contracts.

Very truly yours,

Chester W. Cuthell,
General Counsel.

EXHIBIT G-209

September 26, 1918.

Mr. Chester W. Cuthell,
General Counsel,
United States Shipping Board,
Emergency Fleet Corporation,
Phila., Pa.

Dear Sir:

Answering your letter of the 25th inst., on the subject of base price for Troop Transports building at Sparrows Point and Liberty Plant, this matter was discussed with the Division of Steel Ship Construction and the General Counsel this morning, and it is understood that in view of the facts presented at this conference, the base prices submitted

by this Company are accepted by the Fleet Corporation.

It is requested that this understanding be confirmed in writing.

Yours very truly,

J. W. Powell,
Vice President.

EXHIBIT B-6

October 9, 1918.

From: Chas. M. Piez, Vice Pres. & Gen. Manager.

To: Board of Trustees.

Subject: Bethlehem Shipbuilding Corporation Ltd. Contract for six troop ships to be built at Sparrow's Point.

This contract has been executed by both parties and is awaiting formal approval by the Board.

The reason the contract was let to the Sparrows Point plant of the Bethlehem Shipbuilding Corporation is that, that plant is one of the few in our country properly equipped and organized to construct the intricate troop ships.

This decision was reached after a very careful study of the capabilities of our shipyards, the contracts then in existence with them and the possibility of getting the troop ships in time to make them most useful.

Similar contract was made with the New York Shipbuilding Corporation after the same sort of investigation, and with Bethlehem Shipbuilding Corporation, Ltd., at Alameda.

The troop ship is of a new design and the cost thereof is a matter only of estimate. There is no precedent to guide us. Not any of the contractors would agree to build the ships on a lump sum basis. It was therefore necessary for us to place the contract on a cost and fee basis. The preliminary estimates showed that the ships would probably cost $4,160,000 each. We negotiated with the contractor and procured his consent to a fee of $320,000 per ship which is approximately 7½% of what we thought the ship would cost, but we wish to have some incentive on the contractor's part to holding the cost down. The best device that we have found for that purpose, is to fix an estimated basis cost satisfactory to ourselves and give the contractor a share in savings, if the actual cost be less than the estimated basis cost.

In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.

We discussed this matter with the Board at the time the commitments were made last Spring and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent.

In the contracts now awaiting approval, the basis cost is stated at $4,160,000, which is Bethlehem's estimate; and there is a provision that the basis cost might be revised after we had had an opportunity of making a fuller investigation.

There is submitted herewith, a memorandum dated October 2nd, from the Manager of the Division of Steel Ship Construction showing in outline how their investigation was made. To that memorandum there is attached a detailed estimate submitted by the shipbuilder for similar ships to be built at Alameda. The total estimated cost of those ships is stated to be $4,464,100. Mr. Cox estimates that the proper *bare cost* of the Sparrow's Point ship should be $3,950,000. Based on this bare cost, if we were to follow out our plan for fixing the estimated base cost to be inserted in the contracts, the said estimated basis cost would be $4,443,500. This is considerably in excess of the shipbuilder's estimated basis cost, and we therefore desire the contract as submitted to be approved.

These figures mean that if the ships are constructed for the bare cost as shown by our own figures and those of Newport News Shipbuilding and Dry Dock Company the contractor will receive in addition to its $320,000 fee, one-half of the difference between $3,950,000 and $4,160,000, to wit, $210,000 or a total of $425,000.

There was no separate estimate made of the Sparrows Point Ships because they are identical with the Alameda ships.

The fee paid in the Alameda contract is $300,000 instead of $320,000 for the Sparrows Point ships,

because we are supplying all of the funds necessary to build the former yard. We believe that the contractor is entitled to a higher fee where it is supplying its own yard and equipment.

Charles Piez,

Vice President & General Manager.

CWC:S

Approved by:

Chester W. Cuthell,
General Counsel.

EXHIBIT B-7

Proceedings of the Board of Trustees of United States Shipping Board Emergency Fleet Corporation at a Meeting of Said Board on May 2, 1918.

On motion of Mr. Donald, seconded by Mr. Page and duly carried, it was ordered that the following be incorporated in the minutes of this date:

April 30, 1918.

To the President and Trustees of the United States Shipping Board Emergency Fleet Corporation.

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director, and stockholder, but also with cer-

tain of its subsidiary companies, in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with especial reference to the making of contracts with or the giving of orders to such companies, and therefore request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation.
Bethlehem Steel Company.
Bethlehem Steel Bridge Corporation.
Bethlehem Loading Company.
Fore River Shipbuilding Corporation.
The Detrick & Harvey Machine Company.
Bethlehem Steel Products Company.
Ore Steamship Corporation.
Saucon Land & Improvement Company.
Bethlehem Securities Company.
Bethlehem Shipbuilding Corporation, Ltd.
Union Iron Works Company.
Union Iron Works Dry Docks Company.

Yours very truly,

C. M. Schwab.

Resolved, That all contracts of the United States Shipping Board Emergency Fleet Corporation,

after they are approved by the Vice President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval, and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed.

Exhibit B-10

SUMMARY OF INDUSTRIAL GROUP STATISTICS

YEAR 1927

Group	Gross Sales	Total Cost (Operating Cost, Administrative, Selling and General Expense; Taxes (excluding Federal Income); Depreciation and Depletion)	Profit Amount	Profit % of Total Cost
Automobiles and Trucks	$1,632,379,291	$1,325,400,930	$ 306,978,361	23.1[illegible]
Cast Iron Pipe	35,866,534	31,856,350	4,030,184	12.[illegible]
Cement	40,355,382	33,613,749	6,741,603	20.[illegible]
Chemicals	75,435,250	53,784,289	21,670,981	40.[illegible]
Copper and Brass	266,676,233	235,201,118	31,375,115	13.[illegible]
Electrical Equipment	498,146,85[illegible]	438,100,848	60,046,011	[illegible]
Electric Light & Power	218,578,1[illegible]	142,877,851	75,700,307	[illegible]
Equipment, Supplies & Construction	116,879,156	106,495,157	10,383,999	9.7[illegible]
Food Products	144,229,797	107,155,482	37,073,315	34.[illegible]
Household Products	60,329,135	48,973,039	11,356,096	23.[illegible]
Lead and Zinc	12,421,905	8,759,742	3,662,163	41.[illegible]
Machinery	58,113,283	50,010,921	6,102,362	12.[illegible]
Office & Business Equip.	58,898,781	49,666,037	9,232,714	18.[illegible]
Oil Producing & Refining	608,040,844	546,068,099	61,972,745	11.[illegible]
Paper & Paper Products	75,429,695	62,357,993	13,071,702	20.[illegible]
Railroads	1,592,052,250	1,329,829,826	262,222,424	19.7[illegible]
Steel	1,335,047,198	1,194,416,846	140,630,352	11.7[illegible]
Telephone & Telegraph	927,344,673	685,923,468	241,421,205	35.[illegible]
Tobacco	18,407,249	15,071,193	3,336,056	22.[illegible]
Total	$7,772,651,613	$6,465,643,918	$1,307,007,695	20.[illegible]

YEAR 1928

Group	Gross Sales	Total Cost (Operating Cost, Administrative, Selling and General Expense; Taxes (excluding Federal Income); Depreciation and Depletion)	Profit Amount	Profit % of Total Cost
Automobiles and Trucks	$1,521,719,677	$1,268,045,159	$ 253,674,518	20.[illegible]
Cast Iron Pipe	43,365,803	36,519,893	6,845,910	18.7[illegible]
Cement	31,873,869	25,479,542	6,094,327	23.[illegible]
Chemicals	71,858,998	52,821,271	19,037,727	36.[illegible]
Copper and Brass	304,098,107	268,720,735	35,377,372	13.[illegible]
Electrical Equipment	492,980,904	433,990,961	58,989,943	13.[illegible]
Electric Light & Power	200,412,390	136,236,207	64,176,383	47.[illegible]
Equipment, Supplies & Construction	123,380,389	109,331,450	14,018,909	12.[illegible]
Food Products	131,668,738	95,076,140	36,592,598	38.[illegible]
Household Products	62,337,487	49,242,108	13,095,379	26.[illegible]
Lead and Zinc	15,283,083	9,786,784	5,496,269	56.[illegible]
Machinery	56,532,749	49,474,390	7,058,359	14.[illegible]
Office & Business Equip.	57,926,872	48,824,236	9,102,636	18.[illegible]
Oil Producing & Refining	658,579,113	505,652,614	132,855,499	26.[illegible]
Paper & Paper Products	69,320,821	61,471,092	7,849,729	12.7[illegible]
Railroads	1,660,518,025	1,375,324,721	285,193,304	20.7[illegible]
Steel	1,511,279,665	1,326,404,489	184,875,176	13.[illegible]
Telephone & Telegraph	843,630,175	621,162,370	222,467,805	35.[illegible]
Tobacco	17,995,062	15,378,978	2,616,084	17.[illegible]
Total	$7,854,361,065	$6,488,943,140	$1,365,417,925	21.[illegible]

6-4-29.

EXHIBIT B-11

UNITED STATES STEEL CORPORATION

	1918	1917	1916
Gross Sales (Includes Inter-Co of Transp. & Misc. Cos.)	$1,339,768,771	$1,306,558,022	$934,199,238
Total Cost Operating Cost, Administrative, Selling and General Expense Taxes (excluding Federal Income Tax), and Depreciation and Depletion	918,511,913	829,025,703	626,589,928
(Amount	$421,256,858	$477,532,319	$307,609,310
Profit ((% of Total (Cost	45.86	57.60	49.10

6-3-29

EXHIBIT B-14

WESTERN UNION TELEGRAM

Washington, D. C., March 19, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Letter relative contract for additional vessels to be constructed at Sparrows Point Plant sent to Bethlehem Steel Corporation in error stop above company have been informed that our letter eighteenth instant intended for you.

UNDERWOOD.

EXHIBIT B-17

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Philadelphia, Pa., June 27th, 1918.

The Bethlehem Shipbuilding Corporation
So. Bethlehem, Pa.

Gentlemen:

Sparrows Point Plant—
Troop ships on additional ways.

Reference is made to recent conference with Mr. Brown with respect to terms of contract for construction of six (6) troop ships on the three additional ways at Sparrows Point.

Your proposition was based on an estimated cost of $4,160,000.00 per ship. This estimate is now being checked by the Division of Steel Ship Construction, and it is hoped that their figures will be received shortly.

I cannot recommend, under your present forms of contract, that you should receive more than the following.

A fixed fee of $350,000.00 per vessel and 50% of the savings based on the cost estimated by the Division of Steel Ship Construction in checking your estimate of cost, your share of such savings to be limited to the sum of $200,000.00. You will appreciate, in this connection, that your estimated cost of $4,160,000.00 per vessel is subject to change should the estimate made by the Division of Steel Ship Construction prove it to be excessive.

Kindly advise whether you can see your way clear to revise your proposal in this regard.

Very truly yours,

Morris Down Ferris,
Manager, Contract Division

EXHIBIT B-18

July 29, 1918.

Mr. Charles Piez, Vice President,
U. S. Shipping Board,
Emergency Fleet Corporation,
Philadelphia, Pa.

Dear Sir:

Subject: Construction of six troop ships at Sparrow's Point.

Referring to contract for the six (6) troop ships to be constructed at this Company's Sparrow's Point Plant, and to the Fleet Corporation's statement to me on Friday last that it would not allow a fee of over Three Hundred and Twenty Thousand ($320,000.00) Dollars for the construction of these ships this Company wishes to clearly state in accepting this contract on the above basis that it feels that it is not being properly recompensed for its services and that for the volume of work entailed and the time and labor and shipbuilding skill involved, the fee of Four Hundred Thousand ($400,000.00) Dollars for which it has contended, is the smallest that could properly have been provided.

The written memorandum submitted at the conference offered this Company a fee of Three Hundred and Fifty Thousand ($350,000.00) Dollars for this work and a further memorandum reports an earlier conference with the Vice President of the Company and states that he offered this Company a fee of Three Hundred and Fifty Thousand ($350,000.00) Dollars.

The Bethlehem Shipbuilding Corporation, Limited has however uniformly taken the position that it would do nothing to obstruct the building of ships necessary because of the National emergency and it is solely because of this position that it hereby accepts this contract on this basis that offers entirely inadequate profit returns, both in comparison with the effort involved and in comparison with the other contracts awarded it by the Emergency Fleet Corporation.

There are other modifications in the protection which this Company must ask in view of the above reduction in fee which will be the subject of conference when forms of contracts are prepared for execution by the Emergency Fleet Corporation.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

J. W. Powell,

Vice President.

EXHIBIT B-19

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation,
Philadelphia.

August 1, 1918.

Mr. J. W. Powell, Vice President,
The Bethlehem Shipbuilding Corporation,
Bethlehem, Pa.

Dear Sir:

In reply to yours of July 29th, would say that both Mr. Coonley and Mr. Ferris feel that they

have neither committed themselves nor assented to a fee of $350,000 and that the appearance of this amount in one of the communications to you is due to a clerical error.

It has been the endeavor of the officers of the Fleet Corporation to decide upon a just and compensatory fee for the work which your Corporation has undertaken to do for us at Sparrows Point. After a review of all of the circumstances and conditions, and after consideration of the fees paid to other contractors for substantially similar work we have arrived at the conclusion that $320,000 is a just fee for the construction of these vessels.

We shall be very glad to consider any suggestions you have to make concerning modification of terms in the final contracts, but these modifications should not add to the pecuniary return which your Corporation is to receive for this work.

Very truly yours,

Charles Piez,
Vice President.

EXHIBIT B-20

(Letterhead of Bethlehem Shipbuilding Corporation, Ltd.)

August 12, 1918.

Subject: Contract for Construction Six Troop Ships at Sparrows Point Plant.

United States Shipping Board,
Emergency Fleet Corporation,
140 North Broad Street,
Philadelphia, Pa.

Attention: William H. White, Assistant General Counsel.

Gentlemen:

We are forwarding herewith, three copies of the contract covering the construction of six troop ships at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd., duly executed together with Resolutions of Board of Directors to be attached thereto. We are also forwarding three additional copies for the use of the United States Shipping Board Emergency Fleet Corporation.

These contracts are submitted with the understanding that the base price of the contract is subject to revision after you have checked the same and the final base price is to be mutually satisfactory to the parties to the contract. It is our understanding that this price will be checked and agreed to on or before October first, 1918.

We invite attention to the attached writing marked "Exhibit A," in the contract, covering

schedule of material, price, etc. which are in accord and have been agreed to in connection with the contract covering the construction of 20 troop ships at the Union Plant of the Bethlehem Shipbuilding Corporation, Ltd.

It is also understood that the plans and specifications to be attached to and form a part of this contract are to be duplicates in all respects of those attached to and forming a part of the contract for the two troop ships now being constructed at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd., this contract being numbered 182.

The draft of this contract has been submitted to and agreed upon between Mr. Piez of the United States Shipping Board Emergency Fleet Corporation and Mr. Powell, Vice President of the Bethlehem Shipbuilding Corporation, Ltd.

Your early attention to this matter will be appreciated.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.

H. Brown,
Technical Manager.

EXHIBIT B-23

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Philadelphia, Pa.

December 21, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.
Attention—Mr. J. Powell

Gentlemen:

The Board of Trustees of the Emergency Fleet Corporation, at its meeting on December 17th, passed a Resolution of which the following is a true copy:

"Whereas, A contract has been executed by the executive officials of the Emergency Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for the construction of six troop ships at Sparrows Point; Md., which contract has been approved by the Comptroller Steel Ship Construction Division, Contract Division and the General Counsel:

Be it resolved, That the action of the executive officials of the Emergency Fleet Corporation in executing the aforesaid contract be, and the same hereby, is approved, with the proviso that the General Manager be requested to revise the base price in the light of the changing conditions, or else to stipulate that correction in this price be made to accord with the probable decline in the cost of materials entering into the vessels and the probable increased efficiency of labor owing to the easing off

of the labor market, it being made clear to the Board that the vessels, when contracted for many months ago, were to be troop ship type, since which time the plans have been modified to convert the vessels into high class passenger and cargo ships with a speed of seventeen to eighteen knots an hour."

You will note the suggestions as to revision of the estimated basis price and as to change in type of ship.

Will you please state how much of the materials for these ships you have already purchased or committed yourselves for?

Will you also consider the revisions suggested and confer with me at your early convenience?

Very truly yours,

Chester W. Cuthell,
General Counsel.

EXHIBIT B-24

December 28, 1918.

Subject: Sparrows Point Contracts for Six Troopships.

Attention: Mr. C. W. Cuthell, Esq. Gen'l. Counsel.

United States Shipping Board,
Emergency Fleet Corporation,
140 N. Broad Street,
Philadelphia, Pa.

Dear Sir:

Receipt is acknowledged of the Fleet Corporation's letter of the 21st inst. informing this Company of the resolution passed by the Board of Trustees of the Emergency Fleet Corporation at its meeting on December 17th, approving the action of the executive officials of the Emergency Fleet Corporation in executing the contract between the Emergency Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for the construction of six troopships at its Sparrows Point Plant at Sparrows Point, Maryland; with certain proviso with reference to which the following is submitted.

The Vice-president of the United States Shipping Board Emergency Fleet Corporation under date of June 22d, 1918, forwarded this Company an agreement dated June 21st, 1918, covering the completing of the plant at Alameda and the construction of certain troopships therein. Item III of this letter reads as follows:

"The base price of Four Million, Four Hundred and sixty-four Thousand Dollars ($4,464,000) for each vessel shall be increased or decreased in accordance with any increase or decrease in the cost of the raw material at the price shown in the memorandum attached to this letter."

The attached memorandum included base prices for all of the principal materials entering into the construction of these vessels. As Exhibit A, attached to and forming a part of the contract for the construction of the six troopships at this Company's Sparrows Point Works, the same schedule of material prices is affixed, and the above letter from the Emergency Fleet Corporation is referred to so that the contract as written takes account of changes in the material market.

The nineteenth clause, page 10 of the contract for these vessels states: "Should the rate of wages actually paid by the contractor be increased or decreased by the direction of or with the approval of the owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the affixed schedule in force during the whole period of the construction of the vessels."

So far as shipbuilding labor is concerned, there is no reason to expect any different condition with reference thereto during the period of this contract insofar as "increased efficiency of labor owing to easing off of the labor market" is concerned. And the base price has already been set so low that no modification for this reason is possible. It is under-

stood that when the designs which cover the changes in these vessels, owing to their conversion from troopships to passenger and cargo ships, are completed, this will be treated as a change as provided by the nineteenth clause of the contract.

Probably 85% of the material for these vessels is already under contract.

With reference to your suggestion for a conference—if the above letter does not make clear the points raised by the Board of Trustees, I shall be glad to call on you at your convenience.

Very truly yours,

J. W. Powell,
Vice President.

EXHIBIT B-25

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Philadelphia, Pa.

February 1, 1919.

Mr. J. W. Powell, Vice President,
Bethlehem Shipbuilding Corporation, Ltd.
Bethlehem, Pa.

Dear Sir:

The Board of Trustees, after further consideration, approved, at its last meeting, contract for the six (6) Troop Ships at your Sparrow's Point Plant in its present form.

Very truly yours,

Charles Piez,
Director General.

EXHIBIT B-28

U. S. Shipping Board Building
1319 F. Street NW.

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

January 5, 1918.

Memorandum for the Vice President & General Manager:

Bethlehem Shipbuilding Corporation, Ltd.

We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that Corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,
Division of Steel Ship Construction.
G. S. Radford,
Manager,
Contract Division.

Enclosures.

EXHIBIT B-29

January 5, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
Wilmington, Delaware.

Gentlemen:

Proposal Covering Supply of Additional Tonnage.

Referring to your proposal covering supply of additional tonnage, dated December 19, 1917, and in

confirmation of the understanding between your Messrs. Powell and Brown, on the one hand, and Admiral Bowles and Mr. Radford, representing the Fleet Corporation, on the other, at the conference held on January 3; I beg to inform you that we are having drafts of contracts prepared as follows:

THE UNION PLANT:

Five (5) tank vessels of about 10,100 tons d.-w., as described in your letter of December 19; to be complete with military requirements in accordance with plans and specifications to be submitted to and approved by the Fleet Corporation, and for delivery —the first vessel, March 15, 1919; the second, April 15, 1919; the third, May 15, 1919; the fourth, June 7, 1919; and the fifth July 1, 1919.

These vessels to be constructed on the basis of cost plus a fixed fee of $210,000 each. The estimated base price is to be $2,120,000; any saving to be divided equally between the owner and the contractor. Cost will be in general accordance with the definition in the latest Navy Department destroyer contract, with such suitable modifications as are necessary to bring it into line with the Fleet Corporation's practice in this type of contract. There will be no bonus and penalty clause. The estimated base price is based on the present wage scale and the contract will provide for adjustment in case of change from this scale.

It is our understanding that your Mr. Powell is on his way to the Union Plant and that he will promptly advise us if you are able to take five additional similar vessels under the above conditions with an extension of plant, involving the expendi-

ture of about $500,000—Mr. Powell to furnish the exact figure. If the Fleet Corporation desires, it may order these additional vessels under the above conditions by providing the funds for said plant extension, such extension of plant to remain the property of the Fleet Corporation. The contractor to have the option of purchasing at completion of the contract, for a price to be agreed upon.

SPARROWS POINT PLANT:

Three (3) tank vessels of about 10,100 tons d. w., as described in the case of the Union Plant, except that the fixed fee is to be $200,000 per vessel and the estimated base price, $2,070,000 per vessel. The delivery dates to be February 1, 1919, and one per month thereafter. Also,—

Two (2) troop ships, in general accordance with the Emergency Fleet Corporation's plans and specifications, to be constructed on the basis of cost plus ten per cent. It is our understanding that you will shortly furnish us with your estimated delivery dates for these vessels.

HARLAN PLANT:

Three (3) tank vessels of about 7,500 tons d. w., as described in your letter of December 19, and in accordance with plans and specifications to be submitted to the owner for approval complete, with full military requirements. The contract to be in principle like that described above for the Union Plant vessels. The fixed fee to be $160,000 per vessel and the estimated base price $1,612,000 per vessel. The delivery dates to be March 1, 1919, May 1, 1919, and July 1, 1919. Also,—

Three (3) cargo vessels of about 7,400 tons d. w., as described in your letter of December, 1919, and in accordance with plans and specifications to be submitted to the owner for approval, including full military requirements. The contract to be in principle like that described in the case of the Union Plant. The fixed fee to be $125,000 per vessel and the estimated base price $1,350,000 per vessel. The delivery dates to be February 1, 1919, April 1, 1919 and June 1, 1919.

It is understood that the plant extension, not to exceed $125,000 (you are to furnish the exact figures in detail for our approval within a week) is to be paid for by the owner; the contractor to have the option of buying in this extra plant at a price to be agreed upon at the completion of the work; otherwise, the additional plant remains the property of the Fleet Corporation.

MOORE PLANT:

Six (6) sea-going tugs in general accordance with the Emergency Fleet Corporation's plans and specifications, the contract to be in accordance with the principle outlined above. The fixed fee to be $30,000 per vessel and the estimated base price $300,000. The delivery dates to be—the first vessel in eight months from date of contract and two per month thereafter. The contract will provide for owner's sixty day option for the additional fourteen tugs, of such number less than fourteen as the owner may elect. In case the option is exercised, the fee will be $35,000 but the other conditions will remain the same.

FORE RIVER PLANT:

Three (3) tank vessels of about 9,100 tons d. w., as described in your letter of December 19, in accordance with plans and specifications to be approved by the owner, complete with military requirements. The contract will be in principle like that outlined in the case of the Union Plant. The fixed fee to be $185,000 and the estimated base price $1,865,000. The delivery dates to be March 1, May 1, and July 1, 1919, respectively.

Please confirm your acceptance of the above as soon as practicable.

Very truly yours,
Charles Piez,
Vice President & General Manager.

Rd.
GSR:EMS
F. T. B.

EXHIBIT B-30

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

January 5, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
South Bethlehem, Pa.

Gentlemen:

Re: Requisitioned Hulls—Union Plant
Nos. 150-151-153-170

Confirming an agreement reached at a conference held in the office of the Manager of the Division of

Steel Ship Construction, Emergency Fleet Corporation, January 3, 1918, between Admiral Bowles and your Mr. Powell, regarding the just price and reasonable compensation which the Emergency Fleet Corporation shall pay to the Bethlehem Shipbuilding Corporation, Ltd., for completing the Union Plant stock ships known as their Hulls Nos. 150, 151, 153 and 170; payments for the completion of these vessels shall be on actual cost together with a profit to you as follows: Hulls Nos. 150 and 153—$212,400.00 each; Hull No. 151—$210,600.00; and Hull No. 170—$216,000.00.

These hulls are to be completed in accordance with the plans and specifications which you have furnished to the Corporation, together with all changes which have been ordered to date with full military requirements, and when completed, are to meet and pass the inspection of the United States Steamboat Inspection Service for duty in the War Zone. It is requested that you furnish District Officer A. F. Pillsbury, 310 Sansome Street, San Francisco, California, with copies of the plans and specifications for his use.

$2,124,000.00 each for Hulls 150 and 153:

If, however, the actual costs of the ships to you, are less than $2,106,000.00 for Hull No. 151; and $2,160,000.00 for Hull No. 170, the Corporation is to have a one-half share in the saving. If the Corporation authorizes any increases in your wage scale at your Union Plant above the wage scale of the Wage Adjustment Board as of January 3, 1918, the increase in cost of labor caused thereby and expended on each of these hulls, shall augment the above amounts for its respective hull.

The actual cost shall be generally as defined in the Revenue Bill approved September 8, 1916, Section 302, so far as the requirements of said Revenue Bill are applicable. The actual cost shall include the following and items similar thereto in principle:

a. The net costs after deducting all discounts obtained, of labor and materials, machinery, equipment, and supplies furnished by the builder entering into or expended in the manufacture, building, or construction of the vessel, and other direct charges, such as insurance on the vessel, etc.

b. A proper proportion of running expenses, including ordinary rentals, cost of ordinary repair and maintenance, light, heat, power, insurance, management, salaries, and other indirect charges.

c. A proper proportion of interest accrued within the taxable year on bonds or other debts or loans, contracted to meet the needs of the business and the proceeds of which have been actually used to meet such needs.

d. A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, but such taxes shall not be held to include Federal income or excess profits taxes.

e. A proper proportion of physical losses actually sustained within the taxable year in connection with the business, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

Spoiled work, when not within the control of the builder, and allowing for the natural and ordinary run of mistakes made by the workmen and others under present conditions, will be allowed as an element of actual cost; but defective and spoiled work resulting from carelessness, and which should have been avoided by the exercise of reasonable and usual care, and diligence by the builder or his supervising agent, shall be disallowed as an element either of direct or overhead cost.

Yours very truly,

(sd) Charles Piez,
Vice President & General Manager.

EXHIBIT B-31

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

January 5, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
South Bethlehem, Pa.

Gentlemen:

Re: Requisitioned Hull No. 176
Sparrows Point Plant.

Confirming an agreement reached at a conference held in the office of the Manager of the Division of Steel Ship Construction, Emergency Fleet Corporation, January 3, 1918, between Admiral Bowles and your Mr. Powell, regarding the just price and

reasonable compensation which the Emergency Fleet Corporation shall pay to the Bethlehem Shipbuilding Corporation, Ltd., for completing Sparrows Point Plant stock ship, known as their Hull No. 176; payment for the completion of this vessel shall be on actual cost together with a profit to you of $129,500.00.

If, however, the actual cost of the ship to you, is less than $1,295,000.00, the Corporation is to have a one-half share in the saving. If the Corporation authorizes any increase in your wage scale at your Sparrows Point Plant above the wage scale now in force at the Navy Yard at Philadelphia, the increase in cost of labor caused thereby and expended on this hull shall augment the above amount.

The actual cost shall be generally as defined in the Revenue Bill approved September 8, 1916, Section 302, so far as the requirements of said Revenue Bill are applicable. The actual cost shall include the following and items similar thereto in principle:

a. The net costs, after deducting all discounts obtained, of labor and materials, machinery, equipment, and supplies furnished by the builder entering into or expended in the manufacture, building, or construction of the vessel, and other direct charges, such as insurance on the vessel, etc.

b. A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs and maintenance, light, heat, power, insurance, management, salaries and other indirect charges.

c. A proper proportion of interest accrued within the taxable year on bonds or other debts or loans,

contracted to meet the needs of the business and the proceeds of which have been actually used to meet such needs.

d. A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, but such taxes shall not be held to include Federal income or excess profit taxes.

e. A proper proportion of physical losses actually sustained within the taxable year in connection with the business, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

Spoiled work, when not within the control of the builder, and allowing for the natural and ordinary run of mistakes made by the workmen and others under present conditions, will be allowed as an element of actual cost; but defective and spoiled work resulting from carelessness, and which should have been avoided by the exercise of reasonable and usual care and diligence by the builder or his supervising agents, shall be disallowed as an element either of direct or overhead cost.

This vessel when completed shall be as near as may be, a duplicate of Sparrows Point Hull No. 173, with all changes ordered to date including full military requirements. The plans are to be approved by Lloyd's and the vessel during construction subject to Lloyd's survey and when completed, to be satisfactory to and pass the inspection of the

United States Steamboat Inspection Service for duty in the War Zone.

Very truly yours,

(sd) Charles Piez,
Vice President and General Manager.

EXHIBIT B-33.

4/3/31
WCM
M&R

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Estimating Division
9100 TON Tankers

Hull No.	Keel	Dates Del.		Hours Each	Rel. to 1244	
1244	Apr.	1915	Feb. 1916			
1245	June	1915	Apr. 1916	764,810		
1253	May	1916	June 1917			
1254	Aug.	1916	July 1917	824,142	1.08	
1268	June	1917	Sep. 1918			
1269	Dec.	1917	Sep. 1918	1,158,365	1.515	
1376	Fb.	1919	July 1919			
1377	May	1919	Nov. 1919	870,820	1.14	783170
1378	Mar.	1919	Sept. 1919			
						2½%
1379	Apr.	1919	Oct. 1919			
1380	May	1919	Nov. 1919	695,519	.91	
1381	May	1919	Dec. 1919			

ORDER TRANSMITTING PAPERS AND EXHIBITS ORIGINALLY INTRODUCED IN EVIDENCE

(Filed April 24, 1939)

Before Dickinson J.

And now April 24, 1939 on motion of counsel for the respective parties in the above entitled causes No. 11970 and No. 3315, pursuant to Rule 75 (i) of the Federal Rules of Civil Procedure, it is

Ordered that the following papers and exhibits which were originally admitted in evidence at the hearing before William Clarke Mason, Esq., referee in the above entitled cause No. 11970 and Special Master in the above entitled cause No. 3315, be transmitted to the Circuit Court of Appeals for the Third Circuit to constitute a part of the record on appeal to the Circuit Court of Appeals for the Third Circuit in both of the above entitled causes No. 11970 and No. 3315.

1. Exhibit G-34½, being original chart prepared by Harry Brown.

2. Exhibit G-156, being a photostat of chart prepared by Harry Brown.

3. Exhibits G-157 and G-158, being two destroyer contracts dated December 6, 1917, executed between Bethlehem Shipbuilding Corporation, Ltd. and the United States of America.

4. Exhibits G-171 (a) and G-171 (b) being enlarged photostats of the chart prepared by Harry Brown.

5. Exhibit G-172, being maximum prices of iron and steel products of the American Iron and Steel Institute, pages 49, 50 and 51, being base prices approved September 24, 1917, applied to steel structural shapes.

6. Exhibit G-173, being invoices for plates and shapes of Hulls 253 and 254 submitted by plaintiff at the defendant's request.

7. Exhibit G-204 being sketch of chart by Harry Brown.

8. Exhibits G-205 and G-206 being Contracts 158 and 159.

9. Exhibits B-3 and B-4 being statements showing cost of ships constructed by plaintiff compared with cost of ships built by other shipbuilders.

10. Exhibit B-8 being contract between American Shipbuilding Company and defendant, dated October 24, 1918.

11. Exhibit B-12 being statement adapting the basis of settlement in the American Shipbuilding Company contracts to plaintiff's contracts.

12. All of the testimony of Harry Brown at the Hearing before Owen J. Roberts, Esq.

13. Exhibit B-32, being computations prepared by Joseph A. Honsick.

By the Court,

DICKINSON, *J.*

No. June Term, 1924

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Equity

THE UNITED STATES OF AMERICA,
Complainant;

vs.

BETHLEHEM STEEL CORPORATION; BETHLEHEM SHIPBUILDING CORPORATION, LTD.; BETHLEHEM STEEL COMPANY; FORE RIVER SHIPBUILDING CORPORATION; and UNION IRON WORKS COMPANY,
Defendants.

BILL OF COMPLAINT

(Filed April 17, 1925)

To the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

The United States of America, the complainant above named, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its solicitor, brings this its bill of complaint by direction of the Attorney General against the Bethle-

hem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and thereupon shows to the court and alleges as follows:

JURISDICTION

First. The defendant, *Bethlehem Steel Corporation*, is a corporation created, organized, and existing under the laws of the State of New Jersey. Defendant, *Bethlehem Shipbuilding Corporation, Ltd.*, is a corporation created, organized, and existing under the laws of the State of Delaware. Defendant, *Bethlehem Steel Company*, is a corporation created, organized, and existing under the laws of the State of Pennsylvania, and has its principal office at Bethlehem within the Eastern District of Pennsylvania, and is a citizen of the State of Pennsylvania and an inhabitant of the Eastern District of Pennsylvania. The defendant, *Fore River Shipbuilding Corporation*, is a corporation created, organized, and existing under the laws of the State of Massachusetts, and is an inhabitant of the District of Massachusetts. The defendant, *Union Iron Works Company*, is a corporation created, organized, and existing under the laws of the State of New Jersey, and an inhabitant of the District of New Jersey.

Second. The causes of action herein set forth arise under the laws of the United States, to wit, the Emergency Shipping Fund Provisions of the Urgent Deficiency Appropriation Act of June 15, 1917, and the acts amendatory thereof and supplementary thereto, and the Merchant Marine Act, 1920. The causes of action herein set forth, or part thereof, arose within the Eastern District of Pennsylvania,

in that many of the contracts hereinafter specifically referred to were made, executed, and delivered within the Eastern District of Pennsylvania, and that the moneys of the United States paid in connection therewith, hereby sought to be recovered or a large part thereof, were paid on behalf of the complainant, and received by the defendant Bethlehem Shipbuilding Corporation, Ltd., and other defendants within the Eastern District of Pennsylvania. The defendant Bethlehem Steel Company is jointly liable with the defendant Bethlehem Shipbuilding Corporation, Ltd., with respect to certain of the causes of action herein alleged, particularly with respect to part of the causes of action set forth in paragraphs Forty-second to Fifty-second, inclusive, of this bill.

THE SHIPPING BOARD AND FLEET CORPORATION

Third. Under the Act of Congress of September 7, 1916, (39 Statutes at Large 728), designated by the statutory name "Shipping Act, 1916", provision was made for the creation of a Board composed of five commissioners to be appointed by the President and to be known as the United States Shipping Board. Five commissioners were appointed accordingly by the President and confirmed by the Senate, and were organized and acted thereafter as the United States Shipping Board, with such powers and duties as were in and by said Act conferred, and continued so to act until after the passage of the Act of June 5, 1920, known by the statutory name "Merchant Marine Act, 1920". Under said Act last named the number of commissioners was increased to seven and said Shipping Board was reorganized accordingly, and has since acted, and is now acting, with all the

powers and duties conferred upon it by said Shipping Act, 1916, as amended by said Merchant Marine Act, 1920.

Fourth. In and by section 11 of said Shipping Act, 1916, (39 Statutes at Large 731), it is provided in part as follows:

> That the Board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed $50,000,000. The Board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act.
>
> * * * At the expiration of five years from the conclusion of the present European War the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the Board. The Board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms, and after

payment of all debts and obligations deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the Board at a fair and reasonable value and paid for with funds to the credit of the Board. In case of disagreement such value shall be determined in the manner provided in section ten.

By section 13 of said Act it is further provided:

> That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000, and the Secretary of the Treasury, upon the request of the Board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $50,000,000; * * *

Fifth. Pursuant to said Section 11 of said Act, the said Board caused to be organized on April 16, 1917, under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, a corporation under the name, "United States Shipping Board Emergency Fleet Corporation", hereinafter referred to for brevity as the "Fleet Corporation", and, pursuant to Section 11 of said Act, said Board

for and in behalf of the United States, subscribed for all the capital stock of said corporation, amounting to fifty millions of dollars, which sum was paid therefor from the Treasury of the United States, and said corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation and in and by the said Code of Law for the District of Columbia, as limited and qualified by said Section 11 of the Shipping Act, 1916, and the acts amendatory thereof and supplementary thereto above referred to. At all times all the capital stock of said corporation has been owned by the United States, qualifying shares standing in the name of the trustees thereof.

DECLARATION OF WAR

Sixth. On the sixth day of April, 1917, the United States of America declared war upon the Imperial German Government, and active hostilities continued from that date until the signing of the armistice on the 11th day of November, 1918. A state of war continued until July 2, 1921, the date fixed under the proclamation by the President on November 14, 1921, of the treaty of peace between the United States and Germany and under the joint resolution of Congress of July 2, 1921.

EMERGENCY SHIPPING LEGISLATION DURING WAR

Seventh. Under Clause 11 of Section 8 of Article I of the Constitution of the United States the power is expressly granted to Congress "To declare War", and under Clause 12 of the same section "To raise and support Armies", and under Clause 18 of the

same section "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof". Under and pursuant to the express powers so granted to Congress by the Constitution the Congress of the United States passed an act approved by the President on June 15, 1917 (40 Statutes at Large 182), known as the "Shipping Fund Provisions" of the Urgent Deficiency Appropriation Act, and said provisions as amended by the Act of Congress of April 22, 1918 (40 Statutes at Large 535), and the Act of Congress of November 4, 1918 (40 Statutes at Large, 1020), provided in part as follows:

ACT JUNE 15, 1917, AS AMENDED

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war, and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material or take possession, lease, or assume control of any street railroad, interurban rail-

road, or part thereof, cars and other equipment necessary to operation.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To acquire, construct, establish, or extend any plant, and in pursuance thereof to purchase, requisition, or otherwise acquire title to or use of land, improved or unimproved, or interest therein, and to requisition and take over for use or operation by the United States any plant or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

(f) * * *.

(g) In pursuance of the foregoing powers, or any of them, to make advance payments or loans of such amounts and upon such terms as the President may deem necessary and proper.

(2) Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take

precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, leasing or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or materials so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

(3) Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

(4) The President may exercise the power and authority hereby vested in him and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time.

Clause (g) above quoted was added by said Act of November 4, 1918.

EXECUTIVE ORDERS

Eighth. Under date of July 11, 1917, the President of the United States, by virtue of the authority in him vested by said Act of June 15, 1917, made an Executive order, which reads as follows:

> Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.
>
> By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already

launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said Act in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein, and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board, or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

Woodrow Wilson.

July 11, 1917.

Ninth. Under date of December 3, 1918, the President of the United States, by virtue of the authority in him vested by said Act of June 15, 1917, made a further Executive order, which reads as follows:

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas, by Executive order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas since the issuance of said Executive order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, Sixty-fifth Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively.

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways, and piers, and to constructed vessels or parts thereof, or charters therein; to the operation, management, and disposition of such dry docks, marine railways, piers, and vessels, and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

Woodrow Wilson.

December 3, 1918.

FLEET CORPORATION AN AGENT OF THE UNITED STATES

Tenth. Each and every action taken by the Fleet Corporation as hereinafter alleged was taken solely by virtue of the power and authority conferred upon the President of the United States in and by the said Act of June 15, 1917, and the Acts of Congress amendatory thereof, and by the President delegated to the Fleet Corporation. The Fleet Corporation, under its certificate of incorporation and under the said Shipping Act, 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto.

Eleventh. Each and all of the contracts hereinafter referred to which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by said corporation solely by virtue of the power and authority delegated to said Fleet Corporation as an agency of the United States by the President of the United States, under and pursuant to said Act of June 15, 1917, and the Acts amendatory thereof.

LIMITED POWERS OF FLEET CORPORATION

Twelfth. The transactions with the defendant Bethlehem Shipbuilding Corporation, Ltd., herein set forth, involved amounts greatly in excess of $50,000,000 and under said Shipping Act, 1916, Section 13, above quoted, which was in full force and effect during the period in which the shipbuilding contracts herein referred to and the supplements thereto were made, the Fleet Corporation was prohibited from entering into any of said contracts as a principal or in its corporate or individual capacity, and under then existing law could enter into the same only as an agent of its principal the United States of America, complainant herein.

BETHLEHEM STEEL CORPORATION AND SUBSIDIARIES

Thirteenth. The defendant *Bethlehem Steel Corporation* was incorporated under the laws of the State of New Jersey on or about December 10, 1904, as a reorganization of the United States Shipbuilding Company, a corporation then engaged in the building of ships. Said defendant at or about the time of its incorporation acquired the entire capital

stocks (except qualifying shares held by the directors) of the defendants Bethlehem Steel Company, and Union Iron Works, and of the Harlan & Hollingsworth Corporation, Samuel L. Moore Corporation, and of other corporations. Defendant Bethlehem Steel Company then owned and later transferred to the Bethlehem Steel Corporation, which corporation has since continuously owned all the capital stock of defendant Fore River Shipbuilding Corporation and of the Penn-Mary Steel Company. The defendant Bethlehem Steel Corporation assumed control of the corporations above specifically named as of January 1, 1905, and thereafter until the organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., the defendant Bethlehem Steel Corporation operated the business and plants of said corporations above specifically named, and particularly the shipbuilding plants as subsidiaries, and in fact as incorporated departments or divisions of its shipbuilding organization.

SHIPBUILDING PLANTS OWNED AND OPERATED BY DEFENDANT BETHLEHEM STEEL CORPORATION PRIOR TO TRANSACTIONS HEREIN ALLEGED

Fourteenth. The said Penn-Mary Steel Company prior to the transactions hereinafter referred to between the complainant and defendant Bethlehem Shipbuilding Corporation, Ltd., owned, among other things, a large shipbuilding plant at Sparrow's Point, Maryland, which was, after February, 1916, operated by the defendant Bethlehem Steel Company. Prior to February, 1916, said plant had been operated by Maryland Steel Company, a Maryland Corporation, the entire capital stock of which was

owned by Penn-Mary Steel Company, and contracts with other companies owned and controlled by defendant Bethlehem Steel Corporation for the construction of vessels requisitioned as aforesaid had been made by and in the name of said Maryland Steel Company and were in force on August 3, 1917. The said Maryland Steel Company has since been dissolved, and all its assets taken over and liabilities assumed by defendant Bethlehem Steel Company.

The defendant Fore River Shipbuilding Corporation, prior to said transactions, and thereafter, until the acquisition thereof by defendant Bethlehem Shipbuilding Corporation, Ltd., owned a large and fully equipped shipbuilding plant in the State of Massachusetts, which is now owned and operated by defendant Bethlehem Shipbuilding Corporation, Ltd. The defendant Union Iron Works Company then owned, and has since continuously owned, the entire capital stock of Union Iron Works and of Union Iron Works Dry Dock Company, both corporations organized under the laws of the State of California. The defendant Union Iron Works Company during the said period operated (until the operation thereof was taken over by defendant Bethlehem Shipbuilding Corporation, Ltd.,) a shipbuilding plant known as the "Union plant" on the Pacific Coast at or near San Francisco in the State of California.

REQUISITION OF VESSELS UNDER CONSTRUCTION

Fifteenth. On or about August 3, 1917, the complainant, acting through the Fleet Corporation (under the powers delegated to, and conferred upon it by the President of the United States through said Executive order of July 11, 1917, under said act of

June 15, 1917), as a war measure, requisitioned all vessels of over 2,500 tons deadweight capacity then under construction in all shipyards throughout the United States, including such vessels then under construction in the plants and yards of the defendants Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company, and of said Harlan & Hollingsworth Corporation, and Samuel L. Moore Corporation, and thereafter entered into contracts with said respective corporations for the completion of the vessels so requisitioned, as more fully hereinafter set forth.

INCORPORATION OF DEFENDANT BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Sixteenth. Thereupon the defendant Bethlehem Steel Corporation, for the purpose of carrying out the said contracts for the completion of the vessels so requisitioned at the aforesaid plants of its said subsidiary and controlled companies, and for other purposes, caused the defendant Bethlehem Shipbuilding Corporation, Ltd., to be organized under the laws of the State of Delaware. Ever since the incorporation of said Bethlehem Shipbuilding Corporation, Ltd., on or about October 15, 1917, and thereafter during the entire period of the transactions herein alleged, and up to the present time, the defendant Bethlehem Steel Corporation has owned all of the stock of the defendant Bethlehem Shipbuilding Corporation, Ltd., (except the qualifying shares held in the names of its directors), and has operated said defendant Bethlehem Shipbuilding Corporation, Ltd., as the principal shipbuilding department of its business and (except in so far as

funds have been provided by the United States Government as hereinafter alleged) has provided all necessary funds for such shipbuilding business and has exercised exclusive control and domination over all its business and affairs so that while organized under the form of a corporation, the said defendant Bethlehem Shipbuilding Corporation, Ltd., is in truth and fact not a separate entity, but an organized department of the defendant Bethlehem Steel Corporation.

NEGOTIATIONS FOR CONTRACTS FOR BUILDING NEW SHIPS

Seventeenth. On or about December 13, 1917, the defendant Bethlehem Shipbuilding Corporation, Ltd. acting for itself and for and on behalf of the defendant Bethlehem Steel Corporation through its officers, agents and other representatives entered into preliminary negotiations with the Fleet Corporation (representing the complainant and acting under authority of said executive order of July 11, 1917) for the construction of other steel vessels required by the Government of the United States and deemed necessary for the prosecution of the war.

MERGER OF OTHER SUBSIDIARIES WITH BETHLEHEM SHIPBUILDING CORPORATION, LTD., AND ACQUISITION OF SPARROWS POINT PLANT

Eighteenth. On or about October 30, 1917, the defendant Bethlehem Steel Corporation, through its control by stock ownership and otherwise of the corporations herein referred to caused the defendant, Bethlehem Shipbuilding Corporation, Ltd., to ac-

quired through corporate merger the properties of said Harlan & Hollingsworth Corporation, including its shipbuilding plant at Wilmington, Delaware, and the properties formerly of Samuel L. Moore & Sons Corporation, including its shipbuilding plant at Elizabethport, New Jersey, except certain contracts then in force between said Samuel L. Moore & Sons Corporation and the United States. The properties of said Samuel L. Moore & Sons Corporation so acquired were by the defendant Bethlehem Steel Corporation caused to be transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and thereafter said defendant Moore Shipbuilding Corporation under the laws of Delaware was merged with the defendant Bethlehem Shipbuilding Corporation Ltd. By such corporate merger the defendant Bethlehem Shipbuilding Corporation, Ltd., assumed all the liabilities of said Harlan and Moore corporations, and particularly their respective contractual obligations for the completion of the ships under construction requisitioned as aforesaid. The defendant Bethlehem Steel Corporation at or about the same time caused the defendant Bethlehem Shipbuilding Corporation, Ltd., to acquire from said Bethlehem Steel Company and Penn-Mary Steel Company the said shipbuilding plant at Sparrows Point, Maryland, and said defendant has since such acquisition continuously operated the same.

LEASE BY BETHLEHEM STEEL CORPORATION OF OTHER PLANTS TO SHIPBUILDING CORPORATION

Nineteenth. On or about November 1, 1917, and pursuant to a plan for entering into contracts with

the complainant for the construction of steel vessels, the defendant Bethlehem Steel Corporation caused the plants of the defendants Fore River Shipbuilding Corporation, and Union Iron Works Company and of said Union Iron Works Dry Dock Company to be leased by said respective companies to the defendant Bethlehem Shipbuilding Corporation, Ltd. From the effective dates of said leases said last-named defendant has operated such leased plants. On or about the same date, the defendant Bethlehem Steel Corporation caused the defendant Bethlehem Shipbuilding Corporation, Ltd., to enter into agreements with defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and Maryland Steel Company, whereby the defendant Bethlehem Shipbuilding Corporation (Ltd.), undertook the performance in the name and in behalf of said corporations, respectively, and of said Maryland Steel Company of all of their outstanding contracts with the Government of the United States, for the construction of vessels requisitioned by said requisition order of August 3, 1917. Thereupon the defendant Bethlehem Shipbuilding Corporation, Ltd., entered into and continued in the performance of said contracts and of contracts made in substitution or modification thereof during the period herein referred to with the consent of the complainant.

EXPERIENCE OF DEFENDANTS IN SHIPBUILDING.

Twentieth. At the time of the organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., and at the time of the making of the contracts for building ships hereinafter referred to between

the complainant and said defendant, the defendants Bethlehem Steel Corporation, Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and the Bethlehem Shipbuilding Corporation, Ltd., through its predecessors, the Samuel L. Moore & Sons Corporation and the Harlan & Hollingsworth Corporation, were all thoroughly familiar from practical experience which had extended over a period of many years, with the cost of building the various standard types of steel vessels which had prior thereto been built by said respective corporations at their respective yards, and each of said shipbuilding corporations then maintained a large, efficient, and well-equipped organization engaged in the building of steel vessels. The greater part, if not all of the steel, fabricated or otherwise, required for such shipbuilding operations had been ~~obtained by said~~ shipbuilding companies from the defendant Bethlehem Steel Company and in truth and fact the various shipbuilding corporations above named including defendant Bethlehem Shipbuilding Corporation, Ltd., were organized, acquired, leased or otherwise came into the control of the defendant Bethlehem Steel Corporation, with the purpose and intent of supplying customers for using steel products of the Bethlehem Steel Company and of absorbing into the general overhead of defendant Bethlehem Steel Corporation the overhead expense of said shipbuilding corporations. At the same time, through all of the stock of the said shipbuilding corporations above named and of the Bethlehem Steel Company, being owned directly or indirectly as herein alleged by defendant Bethlehem Steel Corporation, that defendant became the beneficiary, and ultimate acquirer, of all profits

and other benefits derived from all the shipbuilding contracts herein referred to.

Twenty-first. The defendant Bethlehem Shipbuilding Corporation, Ltd., at the time of, and after its incorporation, took over a large part of the organization and personnel of the said shipbuilding companies merged into it, to wit, Harlan & Hollingsworth and Moore Shipbuilding Corporation and of the shipyards of the other defendant shipbuilding corporations above mentioned, control of which it acquired as above mentioned, by lease, or otherwise, and the organization and personnel of the Sparrows Point plant acquired as aforesaid. Upon its organization, and prior to the entering into of contracts with the complainant hereinafter mentioned, the general basis of organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan & Hollingsworth Corporation, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to said Moore Shipbuilding Corporation, was operated and known as the Moore plant. The shipbuilding plant of the Fore River Shipbuilding Corporation at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrow's Point, Maryland, was operated and known as the Sparrow's Point plant, and the works on the Pacific Coast formerly operated by the defendant Union Iron Works Company and by the Union Iron Works Drydock Company, were operated and known as the Union plant. By reason of the fact of the aforesaid long experience of the defendants Bethlehem Steel

Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and of the said Harlan and Moore corporations so merged, in building such vessels, the defendant Bethlehem Shipbuilding Corporation, Ltd., and the defendant Bethlehem Steel Corporation were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom. Neither the complainant, nor its said agency the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as hereinafter stated, Charles M. Schwab) had any such knowledge or means of acquiring the same.

Complainant further shows that at the time of the making of the false representations herein alleged with regard to the estimated cost of the vessels to be constructed under said contracts, the wages of all labor to be employed on such ship construction had been or were about to be fixed at a standard rate applicable to the shipbuilding industry, as was well known to the said defendants, and the rates of wages so fixed and to be fixed by action of the Government during the war covered specifically every grade and class of workmen to be employed in such ship construction; further, that prior to the negotiations aforesaid and the making of the false representations aforesaid the Government of the United States as a war measure and by agreement of all the principal steel companies, including the defendants Bethlehem Steel Corporation and Bethlehem Steel Company, had fixed the price of steel and of all steel products for use in shipbuilding throughout the United States; that such prices had been fixed in great detail and that there was a well known and

recognized price for all steel for ship construction and such prices were intended to be and were in fact unchanged throughout the period of ship construction herein alleged; further, that the Government of the United States through its control of transportation had fixed transportation costs and controlled all other basic industries entering into the production of ships.

Complainant further shows that the costs of labor and steel constitute by far the largest items of the cost of ship construction and that such costs as well as all other costs entering into the cost of ship construction were well known to the said defendants and could be readily computed and ascertained by them.

The said defendants also knew from such experience the amount and number of hours of labor and amount and cost of material and all other elements of costs entering into the construction of such vessels.

WAR EMERGENCY

Twenty-second. Because of the necessity for constructing the vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government of the United States not only to control the entire shipbuilding, steel, coal, transportation, and other industries of the United States but to enter into contracts with shipbuilders for the construction of as many ves-

sels as it was possible for each shipbuilder to construct, and to have the same constructed in the least possible period of time. These conditions and this emergency were well known to the public in general, and particularly to the defendants herein named.

FALSE REPRESENTATIONS BY DEFENDANTS AS TO ESTIMATED COSTS OF VESSELS

Twenty-third. Under these conditions, the defendant, Bethlehem Shipbuilding Corporation, Ltd., acting through its duly authorized representatives, during the months of October, November, and December, 1917, represented to the complainant, through its agency, the Fleet Corporation, that it was impracticable to estimate within a reasonable percentage what would be the actual cost of constructing vessels similar to those theretofore constructed at the various plants then operated by the Bethlehem Shipbuilding Corporation, Ltd., and proposed that said vessels should be constructed for complainant on a basis of actual cost plus a fixed fee, with an agreed upon probable cost, the shipbuilding corporation to be paid in addition to the fixed fee one-half of any saving that might be made below the estimated cost figure, and with the further provision that the estimated cost figure should be increased due to any increase in rate of wages that might be approved by the Emergency Fleet Corporation. The contracts hereinafter referred to were drawn in accordance with said proposal and the respective amounts stated therein as the estimated actual cost of construction, were represented by the Bethlehem Shipbuilding Corporation, Ltd.,

acting through its said representatives, as fair and reasonable estimates of said cost, based upon the wage scale then in effect and upon existing costs of material, and said corporation refused to undertake said construction if lesser sums were insisted upon by complainant.

Complainant avers that said representations were knowingly false in that the Bethlehem Shipbuilding Corporation, Ltd., as hereinbefore set forth, was in a position to know what would be the approximate cost of constructing said vessels, and the said amounts stated in said contracts were known by the said representatives of said corporation to be very greatly in excess of any costs which could reasonably be anticipated, based upon the wage scale then in effect and the existing costs of material. Complainant avers that said estimates and representations were made for the purpose of enabling the Bethlehem Shipbuilding Corporation, Ltd., to derive excessive, unreasonable and unconscionable profits from said contracts.

The respective amounts named in said contracts were objected to by the duly authorized representatives of the Fleet Corporation, acting upon behalf of the complainant, as being excessive and unreasonable, and said amounts were assented to by said representatives only because of the repeated assurance given by said representatives of the Bethlehem Shipbuilding Corporation, Ltd., that said estimates had been made in good faith, were entirely fair and reasonable, and were the lowest sums for which it would undertake the work in question.

The fixed fees specified in said contracts were based upon the fictitious estimates stated in the re-

spective contracts as the estimated actual cost of construction, and were in all or in substantially all of said contracts, approximately equal to ten per cent of such estimated cost.

Complainant avers that at the time of the execution of said contracts, the Bethlehem Shipbuilding Corporation, Ltd., was in a position to know and had every reason to expect that the sum named in the respective contracts as a fixed fee, would in all probability equal or exceed a fair and reasonable profit for the services to be performed thereunder, and the terms of said contracts relating to the respective amounts of the estimated costs and "half-savings" were insisted upon by said corporation for the purpose of enabling it to derive excessive, unreasonable and unconscionable profits from said contracts.

OBLIGATIONS IMPOSED ON DEFENDANTS BY LAW

Twenty-fourth: The complainant further shows that, under the common law and under the laws of the United States, the duty and obligation were imposed upon the defendant Bethlehem Shipbuilding Corporation, Ltd., so entering into contractual relations with the Government of the United States, to perform each and all of said shipbuilding contracts fairly and honestly at the least practicable expense and in the shortest practicable time, and that whatever provisions might be contained in the said contracts to the contrary notwithstanding, the defendant Bethlehem Shipbuilding Corporation Ltd., was entitled to receive from the United States, complainant herein, only a fair and reasonable profit upon the work done, and that any term, covenant, or provision in any such contract for the payment of

any sum in excess of a fair and reasonable profit upon the fair and reasonable cost of the work was and is void and unenforceable, and the same obligation was imposed upon the defendant Bethlehem Steel Corporation in causing the said contracts to be entered into in its behalf.

OTHER SHIPBUILDERS' PROFITS REDUCED BELOW 10 PER CENT

Twenty-fifth. The complainant further shows that during the period in which the hereinafter specified contracts were entered into the Government of the United States, acting under its constitutional powers during the war, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants above named, at a sum not to exceed 10% of the actual cost, and in many instances at a sum much less than 10% of actual cost; and the complainant further shows that 10% of the actual cost with respect to contracts for building ships of the type and tonnage of the vessels contracted for as hereinafter alleged is the maximum profit which in fairness and reason, and under the settled principles of law, a shipbuilder under the circumstances herein alleged is entitled to receive from the complainant.

CHARLES M. SCHWAB, DIRECTOR GENERAL OF FLEET CORPORATION

Twenty-sixth. The complainant further shows that on or about the 11th day of April, 1918, and

before the effective date of many of the shipbuilding contracts hereinafter specifically referred to, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918. During said period said Charles M. Schwab was vested by the Fleet Corporation with full power and authority to make new contracts for shipbuilding and to modify all then existing contracts for shipbuilding, and to exercise all powers of modification of then existing contracts vested in the President of the United States by the said act of June 15, 1917, and by the President delegated to the Fleet Corporation. The powers so vested in said Director General included the power to require and compel the shipbuilding contractors to modify any then existing contracts by reducing the profits therein covenanted for to a reasonable profit. In the exercise of such power the said Charles M. Schwab, acting as Director General as aforesaid, established with respect to other contractors a policy, in behalf of the United States, of reducing excessive profits under then existing contracts to not over 10% of the actual and reasonable cost of construction, and with respect to other contractors limited the profits in contracts to be made to not over 10% of such cost, and declared that the United States Government would not permit contractors engaged in building ships to obtain excessive prices or profits.

At the time said Charles M. Schwab was so acting as Director General and took the aforesaid action with respect to other shipbuilding contractors he was one of the largest stockholders of the defendant Bethlehem Steel Corporation and was Chairman of

its Board of Directors and held a corresponding position in the formal corporate organization of the defendant Bethlehem Shipbuilding Corporation (Ltd.), and by virtue of his position was in control of the affairs of the defendants Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company. During said period Joseph W. Powell was Vice President of defendant Bethlehem Shipbuilding Corporation and, as such, in charge of said contracts and of the performance thereof. During this same period said Charles M. Schwab, while acting as Director General of the Fleet Corporation as aforesaid, took no official action with regard to the herein specified shipbuilding contracts, and refrained from at any time questioning the aforesaid provisions in said construction contracts with respect to the fixed fee for profit and also with respect to the sharing, as aforesaid, of the difference between the fictitious estimated cost and the actual cost, and suffered and permitted the said contracts to remain in full force and effect and new contracts of like tenor and effect to be entered into between complainant and Bethlehem Shipbuilding Corporation (Ltd.), and payments to be made thereunder, to all intents and purposes as if the same constituted valid and binding obligations of the United States.

DUAL RELATIONS OF CHARLES M. SCHWAB

Twenty-seventh. During the period aforesaid said Charles M. Schwab was placed by the Trustees of the Fleet Corporation in a position of power and authority over all contracts for ship construction, under which he had the right and power to

discharge and remove any subordinate official of the Fleet Corporation who did not carry out his commands, and was in a position of practical domination over the various officials of the Fleet Corporation charged with the duty of preparing and executing the shipbuilding contracts hereinafter mentioned. At the same time the said Charles M. Schwab, through his office as Chairman of the Board of Directors of the defendants Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., his large holdings of stock in the former and his dominating position in both corporations as well as in the defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, had the power and authority to direct the terms on which the said contracts should be entered into by and in the name of the defendant Bethlehem Shipbuilding Corporation, Ltd. During the said period and throughout the period of construction the same individuals constituted a majority of the board of directors of each of the defendants, and the principal executive officers of each defendant were the same individuals. There was a complete interlocking directorate and centralized control in the hands of defendant Bethlehem Steel Corporation.

Power of Fleet Corporation to Modify Contracts.

Twenty-eighth. The complainant further shows that during the said period while said Charles M. Schwab was Director General the Fleet Corporation, under the powers delegated to it by said Executive Order of July 11, 1917, and thereafter by the order of December 3, 1918, and under the terms

of the Emergency Shipping Fund Provisions of the said Act of June 15, 1917, had the power to modify, suspend, and cancel each and all of the said shipbuilding contracts and thereby to require the contracting shipbuilder to consent to a reduction of the amounts thereby agreed upon for profits and half savings as aforesaid and to reduce the profits thereby covenanted to be paid to a fair, reasonable amount.

Twenty-ninth. Complainant further shows that the contracts for building new ships (as distinguished from ships requisitioned under construction) hereinabove alleged were known and designated by the following numbers and provided for the construction of ships in number and type as follows:

Contract No.	Number of ships	Type	Deadweight each	Shipyard	Dated back to—
177 S. C.	12	Steel tank	10,100	Union	1917 Dec. 31
	3	do	7,500		
178 S. C.	3	Steel cargo	7,400	Harlan	Do.
179 S. C.	3	do	10,100	Sparrows Point	Do.
182 S. C.	2	Troop ships (steel)		do	Do.
183 S. C.	3	Steel tank	9,100	Fore River	Do.
184 S. C.	6	Tug boats		Moore	Do.
184 S. C. supplemental	14	do		do	
191 S. C.	4	Steel cargo	2 of 11,800 1 of 11,700 1 of 12,000	Union	Do.
196 S. C.	1	do	7,400	Sparrows Point	Do.
	4	Steel tank	10,100	do	1918
226 S. C.	3	Steel cargo	7,400		Mar. 18
230 S. C.	2	do	11,800	Union	Apr. 22
299 S. C.	3	Steel tank	9,100	Fore River	Apr. 30
300 S. C.	3	do	10,100	Sparrows Point	Do.
301 S. C.	6	do	10,100	Union	Do.
	16	Steel cargo	11,800		
312 S. C.	23	do	7,400	Sparrows Point	May 15
313 S. C.	[2]10	Tugboats		Moore	Do.
314 S. C.	3	Steel tank	7,500	Harlan[3]	Do.
	7	Steel cargo	5,100	do	
340 S. C.	[2]20	Troopships		Union	June 21
465 S. C.	16	do		Sparrows Point	July 15

[2] 3 canceled.

[3] All canceled.

The nominal dates of each of said contracts do not represent the effective dates thereof, which in every case were later than the nominal date.

Thirtieth. The terms and provisions of said contracts above specified which related to the basis for ascertaining the cost were substantially the same and the actual cost was thus defined by Article 17 of said contracts as follows:

XVII

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing contracted for prior to the date of this contract and the proceeds of which shall

be used or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed it shall be determined by arbitration in the manner provided for in Article XX.

Thirty-first. The terms and provisions of said contracts by which the price to be paid for each of the vessels to be constructed thereunder are substantially similar. The terms of said contracts relating to price and fixed fee for profit and to the "Half Savings Clause" are contained in Article XIX.

In each of the contracts for ships to be built at yards on the East Coast, Article XIX reads substantially (*mutatis mutandis*) as does Article XIX of Contract 178 S. C., to wit:

XIX

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of one million six hundred and twelve thousand dollars ($1,612,000) for each of said tank vessels, and of one million three hundred and fifty thousand dollars ($1,350,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of one million six hundred and twelve thousand dollars ($1,612,000), or of any cargo vessel in the execution of the work reach or exceed the sum of one million three hundred and fifty thousand dollars ($1,-

350,000), or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of one hundred and sixty thousand dollars ($160,000) for such tank vessel, and one hundred and twenty-five thousand dollars ($125,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of One hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered, and accepted by the Owner. On the completion, a

complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, determined as hereinbefore provided, shall become immediately due and payable.

Article XIX in each of the contracts for ships to be built at yards on the West Coast is substantially identical except that the phrase "In force ——— at said shipyard of the contractor", or an equivalent phrase, is used in place of the phrase used in the East Coast contracts, "In force ——— at the Navy Yard of the United States at" (Boston, Brooklyn, Norfolk, Philadelphia as the case may be).

CONTRACTS No. 465 AND No. 182

Thirty-second. Complainant further shows that contract No. 465, S. C., in the covenants therein contained relating to profits and savings, differed from the others in that it provided that the amount of the "one-half of the savings" to be paid to the shipbuilder should not exceed $200,000.

Contract No. 182 differed from the others by providing that the shipbuilder should be paid the actual cost of construction computed as above set forth in the thirty-third paragraph of this bill plus a fixed profit of 10% of said cost, without any half-savings clause. Complainant alleges that with re-

spect to said two contracts the Bethlehem Shipbuilding Corporation, Ltd., is entitled only to a fair and reasonable profit upon the reasonable and proper cost, and that the provision for "half-savings" in contract No. 465, S. C., is unconscionable, void, and unenforceable in like manner as with respect to the other contracts above specified.

The vessels to be built under said contracts 465 S. C. and 182 S. C. were of a different type from those theretofore built by any one of said shipbuilding corporations at the Sparrows Point shipyard or elsewhere. They at first were intended to be transports, but after the Armistice they were changed to passenger and cargo vessels.

BASIS OF COMPUTATION OF HALF SAVINGS IN CERTAIN CONTRACTS VOID FOR UNCERTAINTY

Thirty-third. Complainant further shows that with respect to contracts numbers 178 S. C., 179 S. C., 183 S. C., 184 S. C., 184 S. C. Supplemental, 196 S. C., 226 S. C., 299 S. C., 300 S. C., 312 S. C., 313 S. C., 314 S. C., 465 S. C., the estimated actual cost under Article XIX is incapable of computation in that it is stated to be—

> at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States at (Boston, Brooklyn, Norfolk, Philadelphia, as the case may be)—

as will more fully appear by reference to the original of each of said contracts when produced upon the trial. At the time of the making and delivery of said contracts and thereafter there was in fact

no wage schedule adopted by the Federal Adjustment Wage Board in force at any one of the Navy Yards specified in the respective contracts. By reason thereof complainant shows that the "half savings clause" in each of said contracts is void for uncertainty as well as for the reasons hereinabove specifically alleged.

AMOUNTS PAID AND RECEIVED ON ACCOUNT OF HALF SAVINGS HEREIN SOUGHT TO BE RECOVERED.

Thirty-fourth. Complainant further shows that in the course of the construction of said vessels the defendant Bethlehem Shipbuilding Corporation, Ltd., from time to time requested payment of amounts of money claimed to be due on account of the said half-savings clause in the contracts referred to, and that thereupon from time to time payments were made under mistakes of law without warrant of law and under erroneous construction of the respective contracts, by the disbursing officers of the Fleet Corporation of moneys of the complainant, and such payments were applied by said defendant on account of moneys claimed by it to be due and payable under said half-savings clauses of said contracts.

SCHEDULE OF HALF SAVINGS ATTACHED

Thirty-fifth. Annexed hereto as a part of this bill is a schedule marked "Exhibit A", showing in detail, with respect to each of the contracts therein specified, the approximate amounts paid to defendant Bethlehem Shipbuilding Corporation, Ltd., as aforesaid on account of "Half savings", amount-

ing in the aggregate to approximately $9,014,633.05. The exact amount thereof can be determined only by means of the discovery and accounting herein prayed for.

SCHEDULE ATTACHED OF FIXED FEES FOR PROFITS AND PROPER BASIS FOR COMPUTATION OF PROFITS

Thirty-sixth. Annexed hereto as a part of this bill is a schedule, marked "Exhibit B", showing in detail with respect to each of the contracts therein specified the following particulars:

(1) Relative to "Construction Cost".

(a) "Contract number"; (b) "Maximum adjusted actual cost"; (c) "Surplus material to be added to adjusted actual cost"; (d) "Maximum actual cost to be credited to shipbuilder"; (e) "Paid to shipbuilder account of actual cost"; (f) "Recoverable overpayment to shipbuilder on actual cost".

(2) Relative to "Fixed fees for profit".

(g) "Fees for profit as fixed in contracts"; (h) "Paid to shipbuilder as fixed fees for profits"; (i) "Maximum profits allowable to shipbuilder (10% of adjusted cost)"; (j) "Recoverable overpayments to shipbuilder for profits on basis of allowance of 10% for profit".

Complainant does not concede that defendant Bethlehem Shipbuilding Corporation, Ltd., is entitled to as much as 10% upon actual cost as a fair and reasonable profit, but, as more fully elsewhere herein set forth, contends that such profit should be fixed by the court after hearing the evidence.

The computation in said schedule is made up on the basis stated only for convenience of illustration. In said schedule the items of "Maximum adjusted actual cost" are made up on the basis as stated in Article XVII of the contracts, but without concession as to the propriety thereof. The amounts stated as "Recoverable overpayment to shipbuilder on actual cost" are the difference between actual cost computed as above stated and amounts paid to said defendant, but complainant does not concede that these are the only amounts recoverable on that account and alleges that the amounts recoverable so stated in said Exhibit B are subject to being increased when the court shall have determined upon the evidence the fair, reasonable, and proper cost of said vessels, and the fair, reasonable, and proper amount to be allowed as profit thereon.

With respect to the ten per cent for profit, complainant further shows that certain of the items specified in Article XVII of said contracts quoted in Article Thirty-third of this bill, to wit, fixed charges, taxes, losses, and depreciation, are not items of a class with respect to which, in fairness and reason, a profit should be computed, and that in equity profit should be computed only with respect to actual cost exclusive of items of the classes last specified.

MONEYS ADVANCED WITHOUT WARRANT OF LAW AND UNDER MISTAKE OF LAW FOR PERMANENT BETTERMENT OF SHIPBUILDING PLANTS

Thirty-seventh. Complainant further shows that in addition to the sums hereinabove alleged there was advanced by the Fleet Corporation, as agent as

aforesaid, the sum of $4,832,212.51, or thereabouts, moneys of the United States, and said amount was received by the said defendant Bethlehem Shipbuilding Corporation, Ltd., to its use, and the greater part thereof expended in and about the permanent betterment and improvement of the plants owned or operated by it and herein referred to as the Alameda, Sparrows Point, and Harlan plants, respectively, and upon an office building at South Bethlehem, Pennsylvania. The detail of the moneys so advanced and expended upon the said shipbuilding plants and office building is stated in a schedule hereto annexed, made a part hereof and marked "Exhibit C". The said moneys were all (except the moneys advanced for said office building) advanced under provisions in the contracts enumerated in said exhibit which are substantially identical with the 28th Article of Contract 177, which reads as follows:

XXVIII

In order to provide the Contractor with two additional slip-ways, with the necessary cranes and other appliances, additional wharves, buildings, including shop and office buildings, compressor plant, tools, and other equipment (hereinafter referred to as the special improvements, tools, and equipment), all of which are necessary to construct the vessels under this contract, the Owner agrees to deposit with a depositary or depositaries, designated by the Contractor and approved by the Owner, from time to time as requested by the Contractor, up to the sum of One Million Dollars ($1,000,000). The amounts so deposited shall be used to pay the cost of the special improvements, tools, and

equipment, including cost of labor, cost of superintendence, and other charges in connection therewith. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. The title to such deposit and interest thereon shall be and remain in the Owner until withdrawn as aforesaid, and upon final completion of this contract or upon default of the Contractor hereunder the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article. The special improvements, tools, and equipment shall continue to be the property of the Owner until they shall have been purchased by the Contractor or abandoned by the Owner as hereinafter provided.

Upon the completion of the said twelve (12) vessels the value of the special improvements, tools, and equipment shall be agreed upon between the parties hereto. In case the parties hereto shall be unable to agree as to the value thereof, it shall be determined in accordance with the provisions of Article XX hereof. The value of the special improvements, tools, and equipment shall be agreed or determined and listed separately. In determining said value there shall be taken into account the original cost as shown by the vouchers delivered as

aforesaid, the cost in a normal material and labor market, all circumstances, such as the use made of the special improvements, tools, and equipment during the life of this contract, the conditions of the shipbuilding business generally, the amount of depreciation therein due to wear and tear, and the replacement value at market prices at that time. Such value having been agreed upon or determined as aforesaid, the Contractor within thirty (30) days thereafter shall elect whether it shall purchase and pay for the special improvements, tools, and equipment, or any part thereof as may be agreed upon, and shall give the Owner notice thereof in writing. In case it shall elect to purchase said property or any part thereof, it shall pay the value thereof as agreed or determined as aforesaid within thirty (30) days thereafter; and upon payment therefor in full the Owner agrees to execute and deliver to the Contractor one or more bills of sale, deeds, or other instruments as shall be necessary in order to convey to the Contractor the Owner's interest in the property so purchased and to discharge or cancel of record any instrument that the Owner shall have theretofore recorded. If the Contractor shall elect not to purchase the special improvements, tools, and equipment, or any part thereof, then the Owner shall have the right to enter upon Contractor's works and remove the same. Any damage done in the removal of said property shall be made good by the Owner. If within one hundred and twenty (120) days from date of notice given to it by the Contractor that it has elected not to purchase any of said property, the Owner shall

not have begun the removal thereof, then the Owner shall be deemed to have abandoned said property and thereupon it shall become the property of the Contractor. If the Owner shall begin removal, the work of removal shall be continued with the utmost vigor and dispatch until completed. If the Owner shall not so prosecute such work of removal, then the Contractor may complete such removal at the risk and expense of the Owner.

In so far as possible, the Contractor agrees to mark the special improvements, tools, and equipment with signs indicating that such property is that of the United States of America represented by the United States Shipping Board Emergency Fleet Corporation. The Contractor further agrees if requested by the Owner, to execute and deliver to the Owner for recordation by it such deeds or other instruments as shall vest and continue in the Owner the title in or to such property, provided it shall be legally possible under the laws of the State of California.

Thirty-eighth. Complainant further shows that the terms and provisions of said contracts above referred to are improvident, unreasonable and unconscionable in the following respects: The moneys so advanced were in fact expended by the defendant Bethlehem Shipbuilding Corporation, Ltd., for the greater part in making permanent and beneficial improvements in and about the said plants. Such improvements included the dredging of channels, the erection of piers and shipways of concrete, and other permanent structures, none of which had or have any salvage value and none of which are

capable of removal, so that the terms and provisions in the said contracts contained whereby, under certain circumstances, the complainant was given the right to remove the same are unconscionable and of no beñefit whatever to the complainant. On the other hand, complainant avers and shows that the said improvements have been and are of great value to the defendant Bethlehem Shipbuilding Corporation, Ltd., and hence to defendant Bethlehem Steel Corporation, and that the same have been, since the completion of the vessels under the contracts herein alleged, and now are, in constant use by the defendant Bethlehem Shipbuilding Corporation, Ltd., and Bethlehem Steel Corporation in their private shipbuilding work. With respect to all such expenditures the amounts of moneys of the United States so advanced constituted a gift to the said defendants of the amount so expended, paid wthout warrant of law, under a mistake of law.

Complainant further shows that the terms and provisions relating to such advances, whereby the defendant, Bethlehem Shipbuilding Corporation, Ltd., is given the option of paying the agreed value of the special improvements, tools, and equipment does not impose upon the defendant Bethlehem Shipbuilding Corporation, Ltd., any obligation to pay the complainant therefor.

Complainant further shows that the right which the said contracts purport to give to the complainant, or its agent the Fleet Corporation, to enter upon the works and remove the same, is of no benefit or advantage to the complainant, because the improvements which were made with the said moneys are in their nature, as above stated, either incapable of removal or incapable of removal without de-

struction and without any value, if and when removed, and that the cost of removing the same would, and does, greatly exceed any value which the same might have.

Thirty-ninth. Complainant further shows that there has been no appraisal made of the value of such tools and improvements; that the parties have never been able to agree upon any basis for the adjustment of the complainant's claim with respect to the amount so advanced; that offers of compromise have been made from time to time, under which, but subject to conditions not agreed to by the complainant, defendant Bethlehem Shipbuilding Corporation, Ltd., has offered to pay therefor upward of $1,349,000; that the amount which the defendant Bethlehem Shipbuilding Corporation, Ltd., should be required to pay to complainant is only determinable by suit in equity, and that the value of the same should be determined and the amount due therefor by defendants Bethlehem Shipbuilding Corporation, Ltd., and Bethlehem Steel Corporation, ascertained by this court in this suit, upon the evidence to be introduced at the trial.

OVERTIME COEFFICIENT OVERPAYMENTS IN CONNECTION WITH REQUISITIONED SHIPS

Fortieth. After the issuance and service upon the defendants Bethlehem Steel Company, Fore River Shipbuilding Company, Union Iron Works Company, and upon Harlan & Hollingsworth Corporation, and Samuel L. Moore & Sons Corporation of the requisition orders of August 3, 1917, hereinbefore set forth, and on or about August 22, 1917, the complainant, under the authority of the said Act of

June 15, 1917, through its agency, the Fleet Corporation, ordered the said respective shipbuilding corporations to complete the ships under construction at their respective yards so requisitioned, upon substantially the same plans and specifications as were provided in the construction contracts between said respective shipbuilding corporations and the purchasers or former owners of the respective ships under construction. These orders were accepted by the respective shipbuilding corporations and subsequently accepted and adopted by the defendant Bethlehem Shipbuilding Corporation, Ltd., either as their agent or successor as aforesaid, and the construction of said requisitioned ships was thereupon proceeded with and the ships completed and delivered.

Forty-first. A statement of the ships under construction so requisitioned at the respective yards on August 3, 1917, including those the completion of which was so undertaken by the Bethlehem Shipbuilding Corporation, Ltd., is hereto attached, made a part hereof, and marked "Exhibit D". This exhibit shows the maximum credits earned by the defendants on account of constructing the requisitioned vessels; the amounts paid to the defendants for such construction; and the amounts representing the minimum that should be recovered by the complainant on account of overpayments to the defendants.

Forty-second. Complainant further shows that prior to the war and prior to the said requisition order of August 3, 1917, the customary hours of labor at the said respective shipyards at which the ships under construction were so requisitioned had been from nine and one-half to ten hours per day.

The contracts under which the said ships were being constructed for private purchasers, or former owners (except three), were on the lump-sum basis and not on the basis of cost plus a percentage for profit; nor were the respective shipbuilding corporations entitled, under such contracts, to additional compensation for overtime work on such construction. In many instances, however, the said shipbuilding corporations, with the purpose and intent and with the result of increasing their profits under contracts with private purchasers, had employed the men overtime and had paid the customary overtime bonus and thereby had advanced the date of completion and delivery of ships so under construction.

Forty-third. Complainant further shows that during the war the Government of the United States, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government, eight hours per day should constitute the normal time of employment of labor, and that for all labor employed over eight hours in any day, a bonus of 50% per hour should be paid on the East Coast and a bonus at times of 50% and at other times of 100% should be paid on the West Coast, and that all work on Saturday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of 100% per hour should be paid. The basis of compensation for such overtime is commonly known as "time and a half" and "double time", according as the bonus is 50 or 100%. The Government had also, through the Shipbuilding Labor Adjustment Board, fixed and adopted a scale of wages for all labor employed in and about all Government shipbuilding contracts.

Forty-fourth. After the date of the requisition of the ships under construction by the defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company for private purchasers and before the completion of said requisitioned ships was undertaken by the defendant Bethlehem Shipbuilding Corporation, Ltd., agreements were entered into between the complainant and defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, respectively, for the completion of the said vessels. Subsequently and in or about the months of October and November, 1917, the said defendants, respectively, entered into agreements with the defendant Bethlehem Shipbuilding Corporation, Ltd., under which the defendant last named undertook and agreed as agent for said respective corporations to continue the completion of said vessels under the contracts then in force, but to complete the same and continue the performance of the said contracts in the name of and in behalf of the said respective defendant corporations. All the payments herein set forth, made by the complainant to the defendant Bethlehem Shipbuilding Corporation, Ltd., with respect to the overtime coefficient were made to said defendant as agent for said defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works, respectively.

The said Samuel L. Moore & Sons Corporation made a similar agency agreement with the said Moore Shipbuilding Corporation. Upon the merger of said Moore Shipbuilding Corporation and Harlan & Hollingsworth Corporation with defendant Bethlehem Shipbuilding Corporation, Ltd., as herein

alleged, all the assets and liabilities of both the said corporations, including the performance of all executory contracts, were taken over by defendant Bethlehem Shipbuilding Corporation, Ltd., which thereby became obligated to complete the aforesaid contracts on behalf of the said Samuel L. Moore & Sons Corporation, and to complete all contracts to which the Harlan & Hollingsworth was a party. Thereafter and prior to the institution of this suit, the defendant Bethlehem Steel Corporation caused the said Samuel L. Moore & Sons Corporation to be dissolved, and thereupon all its contractual obligations, including those relating to said requisitioned ships, were undertaken by the defendant Bethlehem Shipbuilding Corporation, Ltd. The amount of moneys of the United States so paid in behalf of complainant by the disbursing officers of the Fleet Corporation representing overtime coefficient, under mistake of law and without warrant of law, and attributable to the contracts for the completion of vessels, made between the complainant and said respective defendant shipbuilding corporations is set out in detail in a schedule hereto annexed, made a part of this bill and marked "Exhibit E".

Forty-fifth. Complainant further shows that during the period of construction and completion of said requisitioned ships, the respective shipbuilding corporations, and in particular the defendant Bethlehem Shipbuilding Corporation, Ltd., employed the men overtime, but such overtime in excess of eight hours per day did not (except in occasional and rare instances) exceed the normal and customary period of from nine and one-half to ten hours in force prior to the war.

Forty-sixth. Complainant further shows that with respect to such overtime, the defendant Bethlehem Shipbuilding Corporation, Ltd., included as part of the additional cost of labor in the statements rendered to the complainant, an amount herein designated for convenience of reference as the "overtime coefficient". Such overtime coefficient was based upon the unwarranted assumption that by employing labor overtime to the extent and in the manner herein set forth, the overhead of the shipbuilder was increased and the efficiency of the labor decreased. By means of a formula adopted by the respective shipbuilding corporations, three separate coefficients were applied to overtime, such coefficients applying respectively to weekday overtime, for which the workman received time and a half, to weekday overtime for which the workman received double time, and for Sunday and holiday overtime, for which the workman received double time. For purposes of illustration the coefficient known as "2.625", applying to weekday overtime for which the workman received time and a half, is set forth herein to show the effect of such coefficient applied to two hours overtime, this effect being to secure to the said shipbuilding corporations a return of $2.625 for every dollar paid to the workman as overtime bonus. These figures were arrived at on the following basis—the computation for convenience being reduced to units of a dollar:

Shipbuilder pays workmen for overtime of two hours:

(a) Included in his lump-sum price at rate of $1.00 per hour $2.00

(b) Charged to complainant as overtime bonus for two hours at 50% of nor-

mal rate	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives, under labor coefficient 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Alleged loss in workmen's efficiency 37.5% of normal rate of $1.00 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For alleged increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to complainant for each two hours' overtime	$2.625

Total cost paid by shipbuilder as above, for two hours' work	$3.00
Total charged by shipbuilder to complainant for same	2.625
Net cost to shipbuilder for two hours' work	.375

On weekdays for which time and a half was paid the defendant Bethlehem Shipbuilding Corporation, Ltd., or the aforesaid corporations for which the said Bethlehem Shipbuilding Corporation, Ltd., completed the requisitioned ships, charged for and received $2.625 for every dollar of overtime bonus

paid to the workmen. With respect to labor performed on Sundays and holidays the overtime coefficient upon the amount paid as bonus for overtime, namely 100% of the normal rate, was 1.25; and all bonus paid for labor on Sundays and holidays was, in the statements of account rendered by the defendant Bethlehem Shipbuilding Corporation, Ltd., charged with respect to the overtime coefficient at 1.25 times the amount paid as bonus.

Forty-seventh. Complainant further shows that, in truth and in fact, the respective defendant shipbuilding corporations and more particularly the Bethlehem Shipbuilding Corporation, Ltd., did not incur any substantial increase in overhead by reason of the overtime work aforesaid. The efficiency of the labor was not thereby decreased and the hours during which the individual laborers were employed were not increased beyond the hours which had been customary in the shipbuilding industry prior to the war. The efficiency of the individual laborers during the period of their overtime employment was no less than the efficiency during the eight hours of their regular employment, or during the aforesaid period prior to the war, nor was their efficiency during the eight hours of their regular employment decreased by the fact of their working overtime.

Forty-eighth. Complainant further shows that from time to time the respective defendant shipbuilding corporations, and more particularly the defendant Bethlehem Shipbuilding Corporation, Ltd., included in their statements rendered for compensation for overtime work and expense of labor incurred in and about the completion of said requisitioned ships, items representing labor coefficient computed on the basis hereinabove set forth, and

such items were paid by the disbursing officers, under mistakes of law, without warrant of law, and without any authority granted by the complainant. The total amount of moneys so paid by the complainant to said defendant on account of labor coefficient is approximately $942,956.16, and is shown, as approximated with respect to the several defendants therein named in a schedule annexed, made a part of this bill, and marked "Exhibit E".

The exact amount, however, of said payments can only be ascertained by the discovery and accounting herein prayed for, and the total amount herein alleged is tentative and approximate, and subject to adjustment and liquidation upon the facts being fully disclosed by discovery and accounting.

INTEREST ON MONEYS OF THE UNITED STATES ADVANCED BEYOND CONTRACTUAL REQUIREMENTS

Forty-ninth. Complainant further shows that there was no provision in any of the said contracts, either those for the completion of ships requisitioned, or for the building of new ships, whereby complainant was required to advance any moneys to the defendant Bethlehem Shipbuilding Corporation, Ltd., as distinguished from reimbursing said defendant for construction payments actually made under the terms of said contracts. Nevertheless, on or about the 19th day of April, 1918, at the request of the said defendant, the disbursing officers of the Fleet Corporation, without warrant of law under a mistake of law, and in disregard of the contractual obligations of the United States, and of said defendant advanced to said defendant the sum of Three Million Dollars ($3,000,000.00), and on or about

June 12, 1918, the further sum of Five Million Dollars ($5,000,000.00). The said funds amounting to Eight Million Dollars ($8,000,000.00) were deposited by said defendant in a general account, mingled with other funds and used as working capital, not only in connection with the shipbuilding contracts herein referred to but in connection with other shipbuilding contracts. It appears from statements furnished by the said defendant that the bank in which said fund of Eight Million Dollars was deposited allowed interest thereon and that such bank interest is now held by said defendant.

The date and amount of repayment on account of said $8,000,000, so far as repaid, is unknown to complainant, but complainant alleges that such partial repayment was in the form of credits to the complainant of various amounts from time to time with respect to final and other payments claimed to be due defendant Bethlehem Shipbuilding Corporation, Ltd., under certain construction contracts and certain contracts for the completion of requisitioned ships. Complainant alleges and claims that at the time such credit was given the said defendant had been greatly overpaid and that in truth and in fact only a small part, if any, of said advance of $8,000,000 has been repaid and that substantially the whole amount thereof is now due and owing, with legal interest. Complainant further alleges and claims that it is entitled to recover the bank interest so allowed and, in addition, the difference between the same and legal interest at six per cent on the said sum of eight million dollars from the date of the advance and loan thereof to the date of repayment of so much as has been repaid and to the unpaid balance thereof with interest thereon from the

date of advance, the same to be ascertained by the discovery and accounting herein prayed for. Complainant further shows that both of the said advances, amounting to Eight Million Dollars, were made during the period while the defendant Charles M. Schwab was Director General of the Fleet Corporation and exercising control and domination, and standing and in the dual relation, hereinbefore set forth, and that he suffered and permitted said unlawful advances to be made without in any way attempting to protect the interests of the United States to him entrusted.

OTHER OVERPAYMENTS

Fiftieth. Complainant further shows that, in the course of constructing ships under the contracts specified in Article thirty-second of this bill, the defendant Bethlehem Shipbuilding Corporation, Ltd., has represented to be due, and has collected and received from the complainant, and the disbursing officers of the Fleet Corporation have paid to said defendant, without warrant of law, under mistake of law and under erroneous construction of said contracts, other amounts in excess of the amounts due and payable under said contracts. The exact amounts of such excess payments is unknown to complainant, and can not be ascertained save through the discovery and accounting hereby prayed for. Attached hereto as a part of this bill is a schedule marked "Exhibit F" showing the approximate amounts above referred to, which amounts are subject to correction upon discovery and accounting.

CONTROVERSIES BETWEEN THE PARTIES

Fifty-first. Complainant further shows that disputes and controversies have arisen between the complainant and the defendant Bethlehem Shipbuilding Corporation, Ltd., and Bethlehem Steel Corporation as to the proper construction, effect, and validity in law of the terms and provisions of the contracts specified in Article thirty-second hereof and particularly of Articles XVII and XIX thereof, and statements of accounts have been prepared and submitted by and in behalf of said defendants. That many items contained in such statements are agreed to by complainant as proper charges or credits, as the case may be. That many other items are not agreed to, either in amount or in principle, and with respect thereto the propriety of debiting and crediting the same, as the case may be, must be determined by the court upon the issues herein tendered.

APPROXIMATE AMOUNT INVOLVED

Fifty-second. Complainant further shows that the aggregate amount of moneys of the United States unlawfully received by the defendant Bethlehem Shipbuilding Corporation, Ltd., and paid without warrant of law, under mistakes of law, and otherwise, as herein alleged, after the allowance of all proper credits, is upwards of Eleven Million Dollars and that a large part thereof has been received and is now held by the defendants Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Corporation, Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, but that the exact amount of such moneys so

received by the respective defendants, and each of them, is unknown to complainant and can not be ascertained save by and through the accounting and discovery herein prayed for.

No Adequate Remedy at Law

Fifty-third. Complainant further shows that it has no adequate remedy at law; that the causes of action herein set forth are properly cognizable in a court of equity; that a multiplicity of suits will thereby be avoided, and that the relief herein sought can not be obtained except in a court of equity through discovery and accounting and through the equitable relief herein prayed for.

Prayer for Relief

Wherefore the complainant prays for judgment and equitable relief as follows:

First. That a writ or writs of subpœna to answer the bill issue out of this honorable court directed to the defendants above named and each of them, and with respect to such of the defendants as are not inhabitants of the Eastern District of Pennsylvania, or may not be found within such district or may not enter a voluntary general appearance, that service of such subpœna may be made within any district within the United States or the territorial or insular possessions thereof in which any such defendant may be found with the same force and effect as if the same had been served within the Eastern District of Pennsylvania, and, if necessary, that an order for service be made accordingly.

Second. That it be decreed that the terms and provisions in the contracts herein alleged and specified in Exhibit B annexed in so far as they provide for unreasonable and unconscionable profits in the guise of "fixed fee for profits" and/or "half savings", or otherwise, are void and unenforceable, and that this court fix and determine a reasonable and proper profit to be allowed the defendant Bethlehem Shipbuilding Corporation, Ltd., upon and with respect to each of said contracts, and that said defendant be required and directed to account to the complainant for all moneys of the United States received by it on account of profits and to pay to the complainant the excess received over and above such fair and reasonable profit.

Third. That this court fix and determine the reasonable and proper cost of construction of the vessels constructed under the contracts herein alleged and specified in Exhibit B, annexed, and that the defendant Bethlehem Shipbuilding Corporation, Ltd., be required and directed to account to the complainant for all moneys of the United States received by it on account of cost of construction of vessels under said contracts and to pay to the complainant the excess received over and above such reasonable and proper cost of construction.

Fourth. That the complainant have a decree against defendant Bethlehem Shipbuilding Corporation, Ltd., for the unpaid balance of the principal and for interest upon the sum of $8,000,000 paid as herein alleged, from the date of payment until the date of repayment thereof and have discovery and accounting with respect to such repayment, if any, and the time or times thereof.

Fifth. That this court determine the portion of the sum of $4,832,212.51 paid to defendant Bethlehem Shipbuilding Corporation, Ltd., as alleged in the Thirty-ninth Article of this bill, which the complainant is entitled to recover, and that complainant have a decree against said defendant therefor.

Sixth. That the defendants Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., and each of them, make discovery to the complainant of all the financial transactions had between them with respect to the shipbuilding contracts designated in Article Thirty-second of the bill, and particularly with respect to the distribution and allotment between said respective companies of the moneys paid to the defendant Bethlehem Shipbuilding Corporation, Ltd., by the complainant, through its agency the Fleet Corporation, in excess of a fair and reasonable profit upon each and all of said shipbuilding contracts, and also of all moneys of the United States so paid to said defendant under mistakes of law, mistakes of fact, wrongful construction of the terms of said contracts and other mistakes made by the United States Shipping Board, the Fleet Corporation, or any of their respective officers, agents, or employees.

Seventh. That the defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and each of them, make discovery to the complainant with respect to the moneys which they have severally wrongfully received from the complainant as overtime coefficient and severally account to the complainant therefor.

Eighth. That this court take and state an account between the complainant and defendants Bethlehem

Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and each of them, with respect to all moneys received by them, respectively, representing overtime coefficient in relation to the completion of requisitioned ships and of all moneys improperly or wrongfully received by each and all of them, respectively, with respect to and arising out of the transactions set forth in this bill.

Ninth. That the complainant have judgment and a decree for the payment by each of the defendants of all moneys improperly or wrongfully received by each and all of them for such amount as may be found to be due from them, respectively, upon the accounting with respect to the transactions set forth in the bill.

Tenth. That the complainant may have such other or further judgment, decree, or relief as it may be entitled to in the premises and as may be agreeable to equity and the practice of this court.

Dated this 17 day of April, 1925.

UNITED STATES OF AMERICA,
Complainant.

(Signed) GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania, Its Solicitor

JOHN G. SARGENT,
Attorney General.
JAMES M. BECK,
Solicitor General.

(Signed) HENRY P. BROWN,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel United States Shipping Board.
HENRY M. WARD,
Special Assistant to the Attorney General.
Of Counsel.

EXHIBIT A

Showing Amounts Recoverable on Account of Payments Made in Error for So-called Half Savings

Contract No.:	Amounts Recoverable
183 S. C.	$ 402,056.25
299 S. C.	479,402.75
184 S. C.	470,053.70
314 S. C.	136,389.98
178 S. C.	113,610.02
196 S. C.	112,656.84
179 S. C.	515,223.37
226 S. C.	837,579.61
300 S. C.	667,660.53
191 S. C.	1,100,000.00
230 S. C.	455,000.00
177 S. C.	1,980,242.43
301 S. C.	1,744,757.57
Total	9,014,633.05

EXHIBIT B

Statement showing on overpayment on contract ships exclusive of erroneous payments for so-called half savings.

Contract No.	Cost of construction					Fixed feesf or profit			
	Maximum adjusted actual cost	Surplus material to be added to adjusted cost	Maximum actual cost to be credited to shipbuilder	Paid to shipbuilder account of actual cost	Recoverable overpayment to shipbuilder on actual cost	Fees for profit as fixed in contracts	Maximum profits allowable to shipbuilder (10 per cent of adjusted cost)	Paid to shipbuilder as fixed fees for profit	Recoverable overpayments to shipbuilder for profits on basis of allowance of 10 per cent for profit
177	$22,421,655.92	$53,859.63	$22,475,515.55	$22,791,035.96	$315,520.41	$2,520,000.00	$2,242,165.59	$2,268,000.00	$25,834.41
178	9,754,623.78	34,452.84	9,789,076.62	9,798,480.18	9,403.56	855,000.00	975,462.38	769,500.00	205,962.38
179	5,555,820.07	3,785.34	5,559,605.41	5,657,186.58	97,581.17	600,000.00	555,582.01	539,998.50	14,583.51
182	11,209,757.06	152,596.37	11,362,353.43	11,495,435.22	133,079.79	1,120,975.71	1,120,975.71	800,000.00	320,975.71
183	5,292,340.60	19,965.44	5,312,276.04	5,368,867.81	56,591.77	555,000.00	529,231.06	499,500.00	29,731.06
184	6,089,627.46	54,225.65	6,143,853.11	6,543,048.69	399,195.58	670,000.00	608,962.74	656,909.92	47,947.18
191	6,348,008.49	3,809.37	6,351,877.86	6,405,741.11	53,863.25	651,400.00	634,800.85	766,260.00	131,459.15
196	1,124,446.84		1,124,446.84	1,142,822.60	18,376.06	129,500.00	112,444.65	115,400.56	2,955.91
226	10,897,884.93	13,118.77	10,911,003.70	11,149,326.76	238,323.06	1,175,000.00	1,089,788.49	1,057,500.00	32,288.49
230	3,193,344.88	26,433.82	3,219,778.70	3,248,727.48	28,948.78	415,000.00	319,334.49	373,500.00	54,165.51
299	4,852,334.30	18,516.22	4,870,850.52	4,896,985.21	26,134.69	555,000.00	485,233.43	499,500.00	14,266.57
300	5,125,317.03	2,465.36	5,127,782.39	5,166,180.02	38,397.63	600,000.00	512,531.70	540,000.00	27,468.30
301	15,281,001.47	70,363.39	15,351,364.86	15,358,279.45	6,914.59	1,882,500.00	1,528,100.15	1,694,250.00	166,149.85
314	13,021,753.82	48,130.79	13,069,884.61	13,150,053.45	80,168.84	1,154,000.00	1,302,175.38	1,038,577.35	263,598.03
465	14,989,541.66	254,330.61	15,243,872.27	15,240,199.30	3,672.97	960,000.00	1,498,954.17	864,000.00	634,954.17
Undistributable credit due United States	67,917.48		67,917.48		67,917.48		6,791.75		6,791.75
	135,089,510.53	756,115.60	135,845,626.13	137,412,369.82	1,566,743.69	14,043,375.71	13,508,951.05	12,482,896.73	1,026,054.32

SUMMARY

Recoverable overpayments on cost of construction	$1,566,743.69
Net underpayments on fees for profit on basis of 10 per cent of maximum adjusted actual cost	1,026,054.32
Minimum amount recoverable by United States	540,689.37

EXHIBIT F

Showing General Overpayments and Other Sums Recoverable from the Bethlehem Shipbuilding Corporation (Ltd.)

Material sold to shipbuilder	$ 23,013.96
Surplus steel used by shipbuilder	33,013.02
Unbilled material	24,263.98
Carfare Sparrows Point	9,718.52
Idle plant, Sparrows Point	2,128.87
Cost of Perley Morse audit for period when auditors were excluded by shipbuilder	90,019.55
Total	$182,157.90

THE ANSWER OF THE DEFENDANT BETHLEHEM STEEL CORPORATION TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Bethlehem Steel Corporation (hereinafter called the defendant), for its separate answer to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant Fore River Shipbuilding Corporation, Fore River; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in con-

nection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. Except as so specifically admitted, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship and the other defendants herein at all times dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint, involved amounts greatly in excess of $50,000,000, and that

the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that it was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, it acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant Bethlehem Steel Company, Union, Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, Penn Mary Steel Company, a Pennsylvania corporation, and a subsidiary of the defendant Bethlehem Steel Company, owned, among other things, a shipbuilding plant at Sparrows Point, Maryland. Such plant was acquired by Penn Mary Steel Company from Maryland Steel Company, a Maryland corporation, on or about July 1, 1916, (retroactive to March 1, 1916) and immediately thereafter Penn Mary Steel Company leased such plant, together with certain other properties, to the

defendant Bethlehem Steel Company, which thereafter and until on or about November 1, 1917, operated such plant. Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and it liabilities assumed by Penn Mary Steel Company as of July 1, 1916.

Prior to such transactions between Bethlehem Ship and the Fleet Corporation, and until the acquisition of such plant by Bethlehem Ship, Fore River owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by Bethlehem Ship.

On or about January 17, 1905, Union acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation. Prior to such transactions between Bethlehem Ship and the Fleet Corporation, and until the operation of such plant was taken over by Bethlehem Ship, Union operated a shipbuilding plant known as the Union plant at or near San Francisco, California.

Except as so specifically admitted, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon Fore River, Moore, Hanlan, Bethlehem Steel Company and Union an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons dead-

weight capacity, under construction in their respective yards together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into contracts with such corporations covering the completion of such vessels. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons, deadweight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it admits that on or about October 15, 1917, Bethlehem Ship was organized under the laws of the State of Delaware, and that since the incorporation thereof, it has owned all of the capital stock of such corporation (except the qualifying shares held in the names of the directors thereof). Except as so specifically admitted, it denies each and every averment of said Article Sixteenth.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it admits that on or about Oc-

tober 30, 1917, Bethlehem Ship acquired through corporate merger the properties of Harlan, including the Harlan plant at Wilmington, Delaware, and the properties formerly of Moore, including the Moore plant at Elizabethport, New Jersey, except a certain contract then in force between Moore and the United States and to other contracts then in force between Moore and the Fleet Corporation. It admits that the properties of Moore were first transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and that thereafter Moore Shipbuilding Corporation under the laws of Delaware was merged into Bethlehem Ship. It admits that by such merger Bethlehem Ship assumed all the liabilities of Harlan and Moore, and particularly their respective contractual obligations for the completion of the vessels under construction and included in such requisition orders of August 3, 1917. It admits that at or about the same time Bethlehem Ship also acquired from Penn Mary Steel Company such shipbuilding plant at Sparrows Point, Maryland, and that since such acquisition Bethlehem Ship has continuously operated such plant. Except as so specifically admitted, it denies each and every averment of said Article Eighteenth.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, the plants of Fore River, Union and Union Iron Works Dry Dock Company were leased by such corporations, respectively, to Bethlehem Ship and that from the effective dates of such leases Bethlehem Ship has operated such plants.

It admits that on or about the same date, Bethlehem Ship entered into agreements with the defendant Bethlehem Steel Company, Fore River and Union, respectively, whereby Bethlehem Ship undertook the performance of all of the outstanding contracts of such corporations with the Fleet Corporation for the construction of vessels covered by such requisition orders of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint. Except as so specifically admitted, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, the defendant Bethlehem Steel Company, Fore River, Union, and Bethlehem Ship, through the predecessors thereof, Moore and Harlan, were in a position to know what the cost of building the various types of steel vessels which had prior thereto been built by such respective corporations at their respective plants had been, and it admits that at such time Bethlehem Ship maintained at the Fore River, Moore, Harlan, Sparrows Point and Union plants and at Bethlehem, Pennsylvania, an organization engaged in the building of vessels. It admits that after the organization of Bethlehem Ship and throughout the transactions mentioned in the bill of complaint it owned the cap-

ital stock of Bethlehem Ship, Bethlehem Steel Company and Union, and that by reason of such stock ownership it became entitled to dividends as and when declared from the net earnings of such corporations. The capital stock of Fore River was owned by Bethlehem Steel Company until on or about May 2, 1918, at which time it was transferred to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Harlan, Moore, Fore River, Union and Union Iron Works Dry Dock Company, and of the Sparrows Point plant acquired as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making by Bethlehem Ship of the contracts with the Fleet Corporation dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast

formerly operated by the defendant Union and by the Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said Article Twenty-first that neither the complainant, nor its said agency the Fleet Corporation; nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the

Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was under a duty to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted it denies each and every averment of said Article Twenty-fourth.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to, were entered into, the Government of the United States acting under its constitutional powers, had in other

instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants at a sum not to succeed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts between Bethlehem Ship and the Fleet Corporation and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to the shipbuilding contracts specified in the bill of complaint, and refrained from questioning the provisions of such contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It also admits that the

contracts between Bethlehem Ship and the Fleet Corporation annexed to the answer of Bethlehem Ship herein, as Exhibits 15-22, inclusive, thereto were made during the time that Charles M. Schwab was Director General, but prays that reference be made to the averments of Article Fifty-ninth hereof for a fuller explanation thereof.

Except as so specifically admitted, it denies each and every averment of said Article Twenty-six.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation, it owned the capital stock of Bethlehem Steel Company, Bethlehem Ship, Fore River and Union, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it admits that in order to provide Bethlehem Ship with additional facilities with which to expedite the construction of vessels for the Fleet Corporation, Bethlehem Ship and the Fleet Corporation made and entered into the contracts and the Fleet Corporation made the authorizations referred to in Exhibit C to the bill of complaint, under which Bethlehem Ship constructed and provided certain special improvements and additional facilities for the Fleet Corporation and for which the Fleet Corporation paid in part as shown

by such Exhibit, but it avers that such contracts were between the Fleet Corporation and Bethlehem Ship and such authorizations were given by the Fleet Corporation to Bethlehem Ship and all the transactions under such contracts and authorizations were between the Fleet Corporation and Bethlehem Ship. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Thirty-seventh.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to the averments of said Article Thirty-ninth that there has been no appraisal made of the value of such tools and improvements; that the parties have never been able to agree upon any basis for the adjustment of the complainant's claim with respect to the amount so advanced; that offers of compromise have been made from time to time under which, but subject to conditions not agreed to by the complainant, Bethlehem Ship has offered to pay therefor upward of $1,349,000. Except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Thirty-ninth.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon the defendant Bethlehem Steel Company, Fore River, Union, Harlan and Moore of the requisition orders of August 3, 1917, and on or

about August 22, 1917, the Fleet Corporation ordered such respective corporations to complete the vessels covered by such requisition orders substantially in accordance with the plans and specifications provided by the original contracts for such vessels between such respective corporations and the purchasers or former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such orders dated August 22, 1917, were accepted by such respective corporations on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that the contracts under which such vessels were being constructed for private purchasers (except three) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that the respective shipbuilding corporations were not entitled under such contracts to additional compensation for overtime work on such construction. Except as so specifically admitted, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by the defendant Bethlehem Steel Company, Fore River, Union, Moore and Harlan and before the completion of such vessels was undertaken by Bethlehem Ship, agreements were entered into between the Fleet Corporation and the defendant Bethlehem Steel Company, Fore River, Union, Moore and Harlan respectively, for the completion of such vessels. It admits that subsequently and on or about November 1, 1917, the defendant Bethlehem Steel Company, Fore River and Union, re-

spectively, entered into agreements with Bethlehem Ship as hereinbefore in Article Nineteenth hereof set forth. It admits that on or about October 1, 1917, Moore and Moore Shipbuilding Corporation entered into an agreement whereby the latter agreed as agent for Moore to complete the vessels under construction by Moore and included in such requisition order of August 3, 1917, and that upon the merger of Moore Shipbuilding Corporation and Harlan into Bethlehem Ship all the assets and liabilities of both such corporations, including the performance of all their executory contracts, were taken over by Bethlehem Ship which thereby became obligated to complete the aforesaid vessels on behalf of Moore and to complete all contracts which Harlan was obligated to perform. It admits that thereafter and prior to the institution of this suit, Moore was dissolved and thereupon all its contractual obligations, including those relating to such vessels, were undertaken by Bethlehem Ship. Except as so specifically admitted, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition orders Bethlehem Steel Company, Fore River, Moore, Harlan and Union and Bethlehem Ship employed overtime in the construction thereof. Except as so specifically admitted, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the various "overtime co-efficients" which were adopted and

applied to overtime and which the Fleet Corporation agreed to pay as set forth in Articles Forty-sixth and Eightieth of the Answer of Bethlehem Ship on file in this action were arrived at as in said Article Forty-sixth of said Answer of Bethlehem Ship set forth. Except as so specifically admitted, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time Bethlehem Ship included in its statements to the Fleet Corporation amounts on account of such "overtime co-efficients". Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it admits that controversies have arisen between Bethlehem Ship and the Fleet Corporation as to the proper construction and effect of the terms and provisions of the contracts referred to in Article Thirty-second of the bill of complaint and particularly of Articles XVII and

XIX of such contracts, and it admits that statements of accounts have been prepared and submitted by Bethlehem Ship; but it denies that it has in any way participated in such controversies. Except as so specifically admitted and except as so denied, it denies that it has any knowledge with respect to each and every averment of said Article Fifty-first.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: Each and every contract referred to in Article Twenty-ninth of the bill of complaint and listed in Exhibit B thereto was made and entered into by and between the Fleet Corporation and Bethlehem Ship, and each and every transaction under such contracts was between the Fleet Corporation and Bethlehem Ship. Each and every contract and authorization referred to in Article Thirty-seventh of the bill of complaint and listed in Exhibit C thereto was made and entered into by and between the Fleet Corporation and Bethlehem Ship and each and every transaction thereunder

was between the Fleet Corporation and Bethlehem Ship. Each and every order referred to in Article Fortieth of the bill of complaint was given by the Fleet Corporation, respectively, to Bethlehem Steel Company, Fore River, Union, Harlan and Moore and each and every contract resulting from the acceptance of such orders was between the Fleet Corporation and such corporations and Bethlehem Ship and all of the transactions thereunder were between the Fleet Corporation and such Corporations and Bethlehem Ship. None of the contracts referred to in the bill of complaint was made or entered into by the defendant and none of the transactions under such contracts set forth in the bill of complaint was participated in by the defendant. Neither Bethlehem Ship nor any one of the other defendants herein acted as agent for the defendant in any of the transactions set forth in the bill of complaint. Finally, the defendant avers that it has not received any of the specific moneys which the complainant alleges were paid from time to time to Bethlehem Ship and the other defendants herein as set forth in the bill of complaint, but has benefited from the operations of the other defendants herein only to the extent that they have declared dividends payable to it from their net earnings.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, and not waiving but insisting upon the defenses hereinbefore pleaded, but in addition thereto, says:

Fifty-fifth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not divest himself of his relations with Bethlehem. He was assured, however, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Fifty-sixth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the United States Shipping Board Emergency Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been

appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,

Union Iron Works Dry Dock Company.

Yours very truly,

(Sgd.) C. M. Schwab.

CE-MS"

Fifty-seventh: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

> "Resolved, that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Fifty-eighth: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part, either directly or indirectly, in any of the relations and transactions between the Fleet Corporation and the defendants herein.

Fifty-ninth: All of the contracts between the Fleet Corporation and Bethlehem Ship listed in

Article Twenty-ninth of the bill of complaint and in Exhibit 1 to the answer of Bethlehem Ship on file herein, with the exception of contracts numbered 299, 300, 301, 312, 313, 314, 340 and 465, were agreed upon and signed before Charles M. Schwab entered upon his duties as Director General of the Fleet Corporation. Of the exceptions, contracts numbered 299, 300, 301, 312, 313 and 314 were simply replicas of earlier contracts, except that the fixed fees and estimated costs specified in such later contracts were lower than the fixed fees and estimated costs fixed in such earlier contracts. Three of such contracts, to wit, contracts numbered 312, 313 and 340 were cancelled and therefore are not involved in the claim of the complainant that Charles M. Schwab should have modified all such contracts listed in Article Twenty-ninth of the bill of complaint. The remaining exception, contract numbered 465, was dated July 15, 1918, but, as in the case of all such other contracts, Charles M. Schwab had nothing to do with the negotiation of such contract.

Sixtieth: Finally, the vessels covered by such contracts were of unusual design and required a comparatively long period of time for the construction thereof, and during the time that Charles M. Schwab was Director General of the Fleet Corporation such vessels had not been sufficiently completed for anyone to estimate with any degree of accuracy what the ultimate cost of such vessels would be.

Insufficiency of Bill of Complaint.

Sixty-first: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects dismissed, with the costs of this action.

2. That the defendant have such other and further relief as may be just and equitable.

CHARLES SINKLER,
Solicitor for the Defendant Bethlehem Steel Corporation.

CRAVATH, HENDERSON & DE GERSDORFF,
of Counsel.
July 25, 1925.

THE ANSWER OF THE DEFENDANT, BETHLEHEM SHIPBUILDING CORPORATION, LTD., TO THE BILL OF COMPLAINT

(Filed July 24, 1925)

The defendant, Bethlehem Shipbuilding Corporation, Ltd., (hereinafter called the defendant), for its separate answer and counterclaim to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Fore River Shipbuilding Corporation is hereinafter called Fore River; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between it and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to herein and in the bill of complaint were made, executed, and delivered within the Eastern District of Pennsylvania and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by the defendant within the Eastern District of Pennsylvania. Except as so specifically admitted, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation,

under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between it and the Fleet Corporation referred to in the bill of complaint and hereinafter more fully set out, involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between it and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendants Bethlehem Steel Company and Union, and of Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between it and the Fleet Corporation thereafter referred to in the bill of complaint, Penn Mary Steel Company, a Pennsylvania corporation, and a subsidiary of the defendant Bethlehem Steel Company, owned, among other things, a shipbuilding plant at Sparrows Point, Maryland. Such plant was acquired by Penn Mary Steel Company from Maryland Steel Company, a Maryland Corporation, on or about July 1, 1916 (retroactive to March 1, 1916), and immediately thereafter Penn Mary Steel Company leased such plant, together with certain other properties, to the defendant Bethlehem Steel Company, which thereafter and until on or about November 1, 1917, operated such plant. Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and its liabilities assumed by Penn Mary Steel Company as of July 1, 1916.

Prior to the transactions between the defendant and the Fleet Corporation thereafter referred to in the bill of complaint, and until the acquisition thereof by the defendant, Fore River owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by the defendant.

On or about January 17, 1905, Union acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation. Prior to the transactions between the defendant and the Fleet Corporation thereafter referred to in the bill of complaint, and until the operation thereof was taken over by the defendant, Union operated a shipbuilding plant known as the Union plant at or near San Francisco, California

Except as so specifically admitted, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon Fore River, Bethlehem Steel Company, Union, Harlan and Moore an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons dead-weight capacity, under construction in their respective yards together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Cor-

poration entered into contracts with such corporations covering the completion of such vessels as hereinafter in Article Seventy-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons deadweight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it admits that on or about October 15, 1917, it was organized under the laws of the State of Delaware, and that since its incorporation, the defendant Bethlehem Steel Corporation has owned all of its capital stock (except the qualifying shares held in the names of its directors). Except as so specifically admitted, it denies each and every averment of said Article Sixteenth.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it admits that on or about December 13, 1917, the Fleet Corporation and it entered into preliminary negotiations with respect to the construction by it for the Fleet Corporation of certain steel vessels. Except as so specifically admitted, it denies each and every averment of said Article Seventeenth.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it admits that on or about

October 30, 1917, it acquired through corporate merger the properties of Harlan, including its shipbuilding plant at Wilmington, Delaware, and the properties formerly of Moore, including the Moore plant at Elizabethport, New Jersey, except a certain contract then in force between Moore and the United States and two other contracts then in force between Moore and the Fleet Corporation. It admits that the properties of Moore were first transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and that thereafter Moore Shipbuilding Corporation under the laws of Delaware was merged into the defendant. It admits that by such merger it assumed all the liabilities of Harlan and Moore, and particularly their respective contractual obligations for the completion of the vessels under construction and included in such requisition orders of August 3, 1917. It admits that at or about the same time it also acquired from Penn Mary Steel Company such shipbuilding plant at Sparrows Point, Maryland, and that since such acquisition it has continuously operated such plant. Except as so specifically admitted, it denies each and every averment of said Article Eighteenth.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, the plants of Fore River, Union and Union Iron Works Dry Dock Company were leased by such corporations, respectively, to it and that from the effective dates of such leases it has operated such plants. It admits that on or about the same date it entered into agreements with the defendant Bethlehem Steel Company, Fore River and

Union, respectively, whereby it undertook to perform all of the outstanding contracts of such corporations with the Fleet Corporation for the construction of vessels covered by such requisition orders of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, it thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Seventy-sixth hereof set forth. Except as so specifically admitted, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between it and the Fleet Corporation thereafter referred to in the bill of complaint, the defendant Bethlehem Steel Company, Fore River, Union, and the defendant, through its predecessors, Moore and Harlan, knew what the cost of building the various types of steel vessels which had prior thereto been built by such respective corporations at their respective plants had been, and it admits that at such time it maintained at the Fore River, Moore, Harlan, Sparrows Point and Union plants and at its office at Bethlehem, Pennsylvania, an organization engaged in the building of vessels. It admits that after its organization and throughout the transactions herein and in the complaint mentioned the defendant Bethlehem Steel Corporation owned its stock and the stock of Bethlehem Steel Company and Union, and that by reason of such stock ownership the defendant Bethlehem Steel Corporation became entitled

to dividends as and when declared from the net earnings of such defendant corporations. The capital stock of Fore River was owned by Bethlehem Steel Company until on or about May 2, 1918, at which time it was transferred to the defendant Bethlehem Steel Corporation. Except as so specifically admitted, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after its incorporation it took over a large part of the organization and personnel of Harlan and Moore, of the other defendant shipbuilding corporations, control of which it acquired as above mentioned, by lease, or otherwise, and of the Sparrows Point plant acquired as aforesaid. It admits that upon its organization, and prior to the making of the contracts with the Fleet Corporation dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of its organization was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as its Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as its Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as its Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as its Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant Union and by the Union Iron Works Dry Dock Company, were operated

and known as its Union plant. The defendant denies that it has any knowledge with respect to the averment of said Article Twenty-first that neither the complainant, nor its said agency the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom. It avers that, in October, November and December, 1917, and throughout the period of construction of the vessels which the defendant constructed for the Fleet Corporation under the contracts aforesaid, the Fleet Corporation had in its organization and otherwise at its disposal thoroughly capable, honest and fearless officials and employees, many of whom were thoroughly experienced in shipbuilding and thoroughly familiar with the elements of cost ordinarily entering into ship construction and it avers that such officials and employees were as capable of arriving at figures of estimated cost to be specified in such contracts as the officials and employees of the defendant.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant. It avers, however, that neither in October, November and December, 1917, nor at any

time thereafter, did the Government fix the cost of labor entering into such shipbuilding work; on the contrary, in October, November and December, 1917, the cost of labor entering into such shipbuilding work thereafter to be undertaken was unknown and incapable of calculation, and the Fleet Corporation was as capable of prophesying what the cost of such labor would be as the defendant.

Except as so specifically admitted, and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted,

it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it admits that on or about December 13, 1917, it stated to the Fleet Corporation that because of the unprecedented conditions then surrounding the labor and material market, it was impracticable to estimate within a reasonable percentage what would be the actual cost of constructing the vessels which the Fleet Corporation then requested it to build, and that therefore it was impossible to submit fixed prices for such vessels except upon a basis so far above estimated cost that any figure acceptable to the defendant would not be acceptable to the Fleet Corporation. It admits that thereupon it suggested for the consideration of the Fleet Corporation that such vessels (except the troop ships subsequently covered by Contract No. 182) should be constructed for the Fleet Corporation on a basis for each such vessel of actual cost plus a fixed fee, with an agreed upon probable cost of such vessel which should be increased or decreased from time to time by the amounts of any increases or decreases of wages that should be approved by the Fleet Corporation, and by the net cost of any changes and extras ordered by the Fleet Corporation, the defendant to be paid in addition to the fixed fee one-half of any saving that might be made below such agreed upon probable cost as so increased or decreased. It admits that the contracts between the Fleet Corporation and the defendant, Exhibits 5 to 7, and 9 to 20, inclusive, hereto were drawn in accordance with such suggestion, but it avers that the form of such contracts was agreed

upon between the defendant and the Fleet Corporation openly and fairly and after investigation by competent officials of the Fleet Corporation of the merits of the various forms of contracts.

It avers that on or about December 19, 1917, it proposed to the Fleet Corporation certain figures to be agreed upon as the probable costs to be specified in such contracts Exhibits 5 to 7, and 9 to 12, inclusive, hereto; upon information and belief, that competent officers and employees of the Fleet Corporation checked such figures against lump sum prices at that time current for similar vessels, and otherwise; that the Fleet Corporation thereafter proposed to reduce such figures in every case and the defendant agreed to such reduction; and that such figures as so reduced and as so specified in such contracts were agreed upon by the defendant and the Fleet Corporation openly and fairly and without any representation whatsoever on the part of the defendant with respect thereto. It avers that such contracts, Exhibits 13 to 20, inclusive, hereto were replicas of the earlier contracts except that in each case the fixed fees and the figures of estimated cost were reduced by the Fleet Corporation in the later contracts.

Except as so specifically admitted, it denies each and every averment of said Article Twenty-third.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that the defendant was obligated to perform each and all of such contracts fairly and honestly in accordance with their terms and it avers that it did so perform

such contracts. Except as so specifically admitted it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem Steel Corporation and that during such period Joseph W. Powell was a Vice-President of the defendant and, as such, in charge generally of the contracts between the defendant and the Fleet Corporation and of the performance thereof. It

admits that during such period Charles M. Schwab took no official action with regard to the shipbuilding contracts specified in the bill of complaint, and refrained from questioning the provisions of such contracts with respect to the fixed fee for profit and the sharing, as aforesaid, of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It also admits that the contracts between the defendant and the Fleet Corporation annexed hereto as Exhibits 15-22, inclusive, were made during the time that Charles M. Schwab was Director General, but prays that reference be made to the averments of Article Ninety-ninth hereof for a fuller explanation thereof.

Except as so specifically admitted, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation, directly or indirectly, owned the capital stock of Bethlehem Steel Company, the defendant, Fore River and Union, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it admits that on or about the dates specified therefor in said Article Twenty-

ninth the defendant and the Fleet Corporation made and entered into the contracts listed in said Article covering the construction by the defendant for the Fleet Corporation at the respective plants specified, of vessels of the number, type, and deadweight carrying capacity specified in said Article. The defendant admits that the nominal dates of some of such contracts do not represent the dates on which the terms of such contracts were concluded but avers that all of the essential terms of contracts numbered 177, 178, 179, 182, 183, 184, 191 and 196, dated December 31, 1917, were agreed upon by the parties thereto on or about January 3, 1918, and that, similarly, all the essential terms of contracts numbered 226, 230, 299, 300, 301, 312, 313 and 314, were agreed upon by the parties thereto, on March 18, 1918, as to contract numbered 226, on April 8, 1918, as to contract numbered 230, on April 30, 1918, as to contracts numbered 299, 300 and 301, and on May 15, 1918, as to contracts numbered 312, 313 and 314. Copies of all such contracts listed in said Article Twenty-ninth (without the plans and specifications therein referred to), marked Exhibits 5 to 22, inclusive, are hereto annexed and are made a part of this answer as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications. Except as so specifically admitted, it denies each and every averment of said Article Twenty-ninth.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it admits the averments thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it admits that except for the differences in the figures of estimated actual cost

and fixed fees and excepting contract numbered 182, Exhibit 8 hereto, the terms and provisions of such contracts with respect to the price to be paid for the vessels covered thereby as embodied in Article XIX of each such contract are substantially similar, but the defendant prays reference to the contracts themselves for the exact terms and provisions thereof. Except as aforesaid, it denies each and every averment of said Article Thirty-first.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it admits that contract numbered 465, Exhibit 22 hereto, differed from the others in that it placed a limit on the amount which should become payable to the defendant on account of savings. It admits that contract number 182, Exhibit 8 hereto, differed from the others in that it provided that the defendant should be paid the actual cost of constructing each vessel thereunder plus ten per cent. (10%) thereof for profit. It admits that such contracts numbered 465 and 182 covered the construction of vessels different in type from those covered by the other contracts and that such vessels were first intended as transports but were later changed to combined cargo and passenger vessels. Except as so specifically admitted, it denies each and every averment of said Article Thirty-second.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it admits that at the time of the making and delivery of the contracts referred to in said Article and thereafter there was in fact no wage schedule adopted by the Shipbuilding Labor Adjustment Board in force at any one of the Navy

Yards specified in such contracts, respectively. It avers, however, that on January 3, 1918, there were wage schedules in force at the respective Navy Yards specified in such contracts which schedules had been approved by the Navy Yards District Wage Boards; that the Fleet Corporation had in November and December, 1917, ordered and directed the defendant to put such schedules into effect in its respective East Coast plants; that the words "as adopted by the Federal Adjustment Wage Board" were inserted in such contracts through mutual mistake and error; and that the parties to such contracts in using in Article XIX of each thereof the language which is quoted in said Article Thirty-third, intended to indicate and specify such wage schedules in force on January 3, 1918, at such respective Navy Yards. It avers further that throughout the performance of such contracts and in making changes in wage schedules and otherwise in making adjustments and payments under such contracts, the parties thereto mutually adopted and acted upon such intended meaning of such provision. Except as so specifically admitted, it denies each and every averment of said Article Thirty-third.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it admits that at or near the completion of the vessels built under such cost plus fixed fee plus savings contracts, and thereafter, it requested payment from the Fleet Corporation of the amounts payable to it on account of savings and it admits that the Fleet Corporation paid to it an aggregate of $9,014,633.05 on account thereof. Except as to specifically admitted, it denies each and every averment of said Article Thirty-fourth.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it admits that Exhibit A to the bill of complaint shows with respect to each of such cost plus fixed fee plus savings contracts the amount paid by the Fleet Corporation to the defendant on account of "half savings" as aforesaid, aggregating in the case of all such contracts $9,014,633.05. Except as so specifically admitted, it denies each and every averment of said Article Thirty-fifth.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it admits that Exhibit B to the bill of complaint states the amounts paid by the Fleet Corporation to the defendant on account of the actual cost of the vessels built under the contracts listed in such Exhibit, the fixed fees specified in such contracts (except in the case of contract numbered 465); and the amounts paid by the Fleet Corporation to the defendant on account of such fixed fees, but it prays reference to Exhibit 1 hereto and to the averments of Articles Fifty-fourth to Seventy-third, inclusive, hereof for a true and correct statement of the transactions and accounts between it and the Fleet Corporation under such contracts.

It denies that it has any knowledge as to what the complainant concedes or does not concede with respect to the matters in said Article Thirty-sixth averred and denies that it has any knowledge as to the basis of the computations under the heads of "Maximum adjusted actual cost", "Surplus Material to be added to adjusted actual cost", "Maximum actual cost to be credited to shipbuilder",

and "Recoverable overpayment to shipbuilder on actual cost" referred to in said Article Thirty-sixth and said Exhibit B to the bill of complaint.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Thirty-sixth.

Thirty-Seventh: Answering Article Thirty-seventh of the bill of complaint, it admits that in order to provide it with additional facilities with which to expedite the construction of vessels for the Fleet Corporation, it and the Fleet Corporation made and entered into the contracts and the Fleet Corporation made the authorizations referred to under the head of "Authority for Advance" in Exhibit C to the bill of complaint, and that under and pursuant to such contracts and authorizations the Fleet Corporation paid the amounts specified under the head of "Amounts Advanced" in such Exhibit C; but it prays reference to Exhibit 2 hereto and to the averments hereinafter set forth for a true and correct statement of the transactions and accounts thereunder. Copies of such contracts and authorizations, marked Exhibits 5, 23, 24, 25, 26, 27, 6, 28 and 21, respectively, are hereto annexed and are made a part hereof as if herein fully set forth, and the defendant avers that each and all thereof were made and given by the Fleet Corporation and each and every action thereunder was taken by such corporation, as principal and as the real party in interest thereunder and not as the agent of the complainant.

The defendant avers that at the direction and with the approval of the Fleet Corporation and in ac-

cordance with the terms and provisions of such contracts and authorizations, it provided at the plants specified in column A of Exhibit 2 hereto the special improvements and additional facilities covered by such contracts and authorizations at a cost to it of the amounts specified in column B of such Exhibit 2; that of said amounts the Fleet Corporation, in accordance with the terms and provisions of such contracts and authorizations, has paid to or on the order of the defendant the amounts specified in column C of such Exhibit 2; and that, although duly requested, the Fleet Corporation has failed and refused to pay to the defendant either the amounts specified in column D of such Exhibit 2 or the amounts specified in column E thereof.

The defendant further avers that upon the completion of such improvements and facilities covered by such contracts and authorizations, Exhibits 5, 23, 24, 25, 26, 27, 6 and 28 hereto, it entered into negotiations with the Fleet Corporation for the purchase from the Fleet Corporation of such improvements and facilities under and pursuant to the terms and conditions of such contracts and authorizations; that the Fleet Corporation at that time and from time to time thereafter, made appraisals of the value of such improvements and facilities and communicated the results thereof to the defendant, who, in turn, made estimates of the value to it of such improvements and facilities; that thereupon, after long negotiations during which the defendant was ready and willing to purchase such improvements and facilities at prices which to it at that time seemed reasonable and urged early action on the part of the Fleet Corporation, in February, 1920, it en-

tered into agreements with representatives of the Fleet Corporation for the purchase of such improvements and facilities, but the Board of Trustees of the Fleet Corporation repudiated the authority of such representatives and repudiated such agreements; that thereafter it entered into negotiations with the Construction Claims Board of the Fleet Corporation for the purchase of such improvements and facilities and made an offer of about One million three hundred thousand dollars ($1,300,000) therefor, which offer such Claims Board transmitted to the Board of Trustees of the Fleet Corporation with the recommendation that it be accepted but such Board of Trustees delayed consideration of such offer until the defendant, in view of changed conditions, withdrew the same; that thereafter and on or about September 15, 1921, the defendant notified the Fleet Corporation to remove the greater part of such improvements and facilities, but the Fleet Corporation requested extensions of time within which to begin the removal of such improvements and facilities and the defendant from time to time gave extensions of such time so long as negotiations between the defendant and the Fleet Corporation for the settlement of other controverted questions between them should be proceeding expeditiously; that the Fleet Corporation has long since terminated such negotiations and has abandoned all such improvements and facilities to the defendant.

Except as so specifically admitted, it denies each and every averment of said Article Thirty-seventh.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, except the averments thereof admitted by it in Article Thirty-seventh hereof, it denies each and every averment of said Article Thirty-ninth.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon the defendants Bethlehem Steel Company, Fore River and Union and upon Harlan and Moore of the requisition orders of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered such respective corporations to complete the vessels covered by such requisition orders substantially in accordance with the plans and specifications provided by the original contracts for such vessels between such respective corporations and the purchasers or former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such orders dated August 22, 1917, were accepted by such respective corporations on such condition and that the completion of such vessels was subsequently taken over by the defendant which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Seventy-fifth and Seventy-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels included

in such requisition orders of August 3, 1917, and, to the extent that such figures are the same as those shown on Exhibit 3 hereto, the total amounts paid by the former owners and the Fleet Corporation to such corporations and the defendant on account of the construction of such vessels, but it refers to such Exhibit 3 for a correct statement of the transactions and accounts between the Fleet Corporation and such corporations and the defendant on account of the construction of such vessels. Except as so specifically admitted, it denies each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that the contracts under which such vessels were being constructed for private purchasers (except three) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that the respective shipbuilding corporations were not entitled under such contracts to additional compensation for overtime work on such construction. Except as so specifically admitted, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the shipbuilding war program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Sat-

urday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by the defendants Bethlehem Steel Company, Fore River and Union and Moore and Harlan and before the completion of such vessels was undertaken by the defendant, agreements were entered into between the Fleet Corporation and the defendants Bethlehem Steel Company, Fore River and Union and Moore and Harlan respectively, for the completion of such vessels as hereinafter in Article Seventy-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, the defendants Bethlehem Steel Company, Fore River and Union, respectively, entered into agreements with the defendant as hereinafter in Article Seventy-sixth hereof set forth. It admits that on or about October 1, 1917, Moore and Moore Shipbuilding Corporation entered into an agreement whereby the latter agreed as agent for Moore to complete the vessels under construction by Moore and included in such requisition order of August 3, 1917, and that upon the merger of Moore Shipbuilding Corporation and Harlan with the defendant all the as-

sets and liabilities of both such corporations, including the performance of all their executory contracts, were taken over by the defendant which thereby became obligated to complete the aforesaid vessels on behalf of Moore and to complete all contracts which Harlan was obligated to perform. It admits that thereafter and prior to the institution of this suit, Moore was dissolved and thereupon all its contractual obligations, including those relating to such vessels, were undertaken by the defendant. Except as so specifically admitted, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition orders Bethlehem Steel Company, Fore River, Moore, Harlan and Union and the defendant employed overtime in the construction thereof. Except as so specifically admitted, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the various "overtime co-efficients" which were adopted and applied to overtime and which the Fleet Corporation agreed to pay as hereinafter in Article Eightieth hereof set forth, were arrived at as follows (the computations for convenience being reduced to units of a dollar):

"Time and a Half."

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2,625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours' overtime	$2.625

"Double Time."

Shipbuilder pays workmen for overtime of one hour:

(a) At rate of $1 per hour	$1.00

(b) Bonus paid double time per hour	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$2.00

Shipbuilder receives under co-efficient of 1,8125, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency 3/8 per hour	.375
(3) *Increased overhead 50% (1/2 hour plus 3/8 of an hour)	.4375
Total	$1.8125

"Double Time on Sundays and Holidays."

Shipbuilder pays for each one hour overtime bonus	$1.00
No loss in efficiency.	
*Increased overhead 50% of one-half hour	.25
	$1.25

Except as so specifically admitted, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

*The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time it included in its statements to the Fleet Corporation on account of the "overtime co-efficients" the amounts specified in column K of Exhibit 3 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it admits that there were no provisions in any of the contracts referred to in the bill of complaint whereby the complainant was required to advance any moneys to the defendant as distinguished from the Fleet Corporation reimbursing the defendant for payments on account of the cost of construction of the vessels thereunder. It admits that on or about April 24 and June 14, 1918, the Fleet Corporation advanced to the defendant $3,000,000 and $5,000,000, respectively; in the aggregate $8,000,000. It admits that such $8,000,000 were deposited by the defendant in general accounts, mingled with its other funds and used as working capital in connection with the contracts between the defendant and the Fleet Corporation referred to in the bill of complaint. It admits that it collected from the banks in which such funds were deposited, interest on its daily balances. It avers that such advances were made by the Fleet Corporation to enable the defendant to expedite the construction of vessels then under construction by the defendant for the Fleet Corporation upon the understanding and agreement that the repayment of such advances should be effected by the deduction from time to time from amounts due from the Fleet Corporation

to the defendant on account of the construction of such vessels of amounts aggregating the amount of such advances, but without any agreement on the part of the defendant to pay any interest on account of such advances. The defendant further avers that such advances were repaid to the Fleet Corporation in such manner by deducting from moneys due and owing from the Fleet Corporation to the defendant on account of the construction of such vessels the amounts set forth in Exhibit 4 hereto; and that at the time of such repayments the Fleet Corporation did not make any claim or demand for the payment of any interest on account of such advances but effected and accepted repayment as aforesaid in complete satisfaction of the obligation of the defendant on account of such advances.

It admits that the advance of $5,000,000 thereof on June 14, 1918 was made during the period that Charles M. Schwab was Director General of the Fleet Corporation, and it admits that Charles M. Schwab took no part whatever in the negotiations between the defendant and the Fleet Corporation with respect to such advance to the defendant.

Except as so specifically admitted, it denies each and every averment of said Article Forty-ninth.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it admits that controversies have arisen between it and the Fleet Corporation as to the proper construction and effect of the terms and provisions of the contracts referred to in Article

Thirty-second of the bill of complaint and particularly of Articles XVII and XIX of such contracts; and it admits that statements of accounts have been prepared and submitted by it. It admits that many items contained in its statements to the Fleet Corporation on account of the cost of such vessels were agreed to by the Fleet Corporation as proper charges or credits, as the case might be. It denies that it has any knowledge as to the exact number and nature of the items which the complainant and the Fleet Corporation now object to in such statements.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifty-first.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant, and by way of explanation of the transactions, set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

The Contract Ship Program.

Fifty-fourth: On or about the dates, respectively, listed in column B of Exhibit 1 hereto, the defendant and the Fleet Corporation made and entered into

the contracts, respectively, listed in Column A of such Exhibit 1, copies of which marked, respectively, Exhibits 5 to 22, inclusive, are annexed hereto and are made a part hereof as if herein fully set forth. Such contracts are the same contracts listed in Article Twenty-ninth of the bill of complaint and were made by the Fleet Corporation, and each and every transaction thereunder was carried out by the Fleet Corporation, as principal and as real party in interest thereunder and not as the agent of the complainant. All of such contracts, other than contract numbered 182, Exhibit 8 hereto, which is a cost plus ten per cent. (10%) of cost contract, are cost plus fixed fee plus savings contracts.

Fifty-fifth: On or about February 11, 1919, the Fleet Corporation directed the defendant to suspend work on three of the cargo vessels, Hulls numbered 1685, 1686 and 1687, covered by contract numbered 301, Exhibit 17 hereto, and on or about August 19, 1919, directed the defendant to cancel such contract as to such three cargo vessels. In accordance therewith, the defendant without prejudice terminated the work on such vessels and thereafter without prejudice complied with all instructions of the Fleet Corporation in that connection.

Fifty-sixth: On or about August 19, 1919, the Fleet Corporation notified the defendant that contract numbered 312, Exhibit 18 hereto, was thereby cancelled and instructed the defendant that all work thereunder should be terminated, and thereupon without prejudice the defendant terminated all work under such contract and complied with the instructions of the Fleet Corporation in that connection.

Fifty-seventh: On or about April 25, 1919, the Fleet Corporation notified the defendant that contract numbered 313, Exhibit 19 hereto, was thereby cancelled and instructed the defendant that all work thereunder should be terminated, and thereupon without prejudice the defendant terminated all work under such contract and complied with the instructions of the Fleet Corporation in that connection.

Fifty-eighth: On or about October 15, 1918, the Fleet Corporation cancelled contract numbered 340, Exhibit 21 hereto, and terminated all work thereunder.

Fifty-ninth: On or about April 5, 1919, the defendant and the Fleet Corporation modified contracts numbered 182 and 465, Exhibits 8 and 22 hereto, so as to provide that the vessels covered thereby should be completed as combined passenger and cargo vessels in accordance with definite instructions to be issued by the Fleet Corporation. Thereafter the Fleet Corporation issued such instructions and the defendant in pursuance thereof completed such vessels (with the exception of the vessels work on which was terminated as hereinafter set forth) as combined passenger and cargo vessels.

Sixtieth: On or about August 24, 1920, the defendant received from the Fleet Corporation instructions to suspend work on three of such vessels, Hulls numbered 2508-2510, inclusive, covered by contract numbered 465, Exhibit 22 hereto, and on or about November 29, 1920, notified the defendant that it had on October 25, 1920, cancelled so much of such contract as related to the construction of such three vessels. In accordance therewith, the defendant

without prejudice suspended work thereon and thereafter without prejudice complied with all instructions of the Fleet Corporation in that connection.

Sixty-first: With the exception of the vessels covered by such contracts numbered 301, 312, 313, 340 and 465, work on which was terminated as hereinabove set forth, the defendant completed all of the vessels which by the terms and provisions of such contracts, Exhibits 5 to 22, inclusive, hereto, it agreed to construct for the Fleet Corporation, in accordance with the plans and specifications therefore referred to in such contracts with certain changes therein authorized by the Fleet Corporation in accordance with the terms and provisions of such contracts, and it delivered such vessels complete to or on the order of the Fleet Corporation on or before the dates specified in Column C of such Exhibit 1. The defendant duly performed all the terms and conditions of all such contracts (including the contracts cancelled in whole or in part as aforesaid) on its part to be performed and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and the terms and provisions of such contracts.

Sixty-second: While the defendant was engaged in the work of constructing the vessels under each such contract, the rate of wages actually paid by the defendant in the construction thereof was, by the direction of or with the approval of the Fleet Corporation, increased over the wages provided by the schedule referred to in Article XIX of such contract, and by reason thereof the labor cost actually

incurred by the defendant in the construction of such vessels was increased over the labor cost that would have been incurred by the defendant had such schedule remained in force during the whole period of the construction of such vessels. The aggregate amount by which the labor cost of such vessels actually incurred by the defendant was increased over the labor cost that would have been incurred if such schedule had remained in force during the period of the construction thereof was, as found on the audit made by the Fleet Corporation as hereinafter set forth, as set forth in column E of such Exhibit 1.

Sixty-third: From time to time, while the defendant was engaged in the work of constructing the vessels under each such contract, the Fleet Corporation under and pursuant to the terms of such contract ordered and directed that certain changes in the plans and specifications therein referred to be made, and such changes were made in accordance with the orders and directions of the Fleet Corporation given as aforesaid. The net amount by which the estimated cost of such vessels specified in Article XIX of such contract was increased or diminished by reason of such changes, as found on such audit, was as set forth in column F of such Exhibit 1.

Sixty-fourth: From time to time while the defendant was engaged in the work of constructing Hulls numbered 2505-2507, under contract numbered 465, the Fleet Corporation, under and pursuant to the terms of such contract, and in addition to the changes in the plans and specifications therefor resulting from the modification of such contract in

Article Fifty-ninth hereof mentioned, ordered and directed that certain other changes in such plans and specifications be made and such changes were made in accordance with the orders and directions of the Fleet Corporation given as aforesaid. By reason of all such changes made up to March 1, 1921, the estimated cost of each of such three vessels specified in Article XIX of such contract was increased in accordance with such Article XIX by more than the sum of One million four hundred forty thousand dollars ($1,440,000), and the fixed sum for profit for each of such three vessels specified in such Article XIX was in accordance with such Article XIX increased by more than the sum of One hundred five thousand dollars ($105,000). In view of such changes as aforesaid, and on or about April 8, 1921, the defendant and the Fleet Corporation made and entered into an agreement whereby it was agreed that the sum by which such estimated cost of each of such three vessels should be increased on account of all such changes made up to March 1, 1921, should be fixed at such sum of One million four hundred forty thousand dollars ($1,440,000), and that the sum by which such fixed sum for profit for each of such three vessels should be increased on account of such changes should be fixed at such sum of One hundred five thousand dollars ($105,000), and that the maximum amount to which the defendant might become entitled pursuant to such Article XIX, on account of any sum by which the actual cost of any such vessel should be less than the estimated cost thereof revised as in such Article XIX provided should be increased from Two hundred thousand dollars ($200,000) to Two hundred

fifty thousand dollars ($250,000). The net amount by which the estimated cost of such three vessels was increased in accordance with such Article XIX by such changes made after March 1, 1921, was One million one hundred eighty-three thousand seven hundred seventy-three dollars ($1,183,773). The net amount by which such fixed sum for profit for each of such three vessels was increased in accordance with such Article XIX by such changes made after March 1, 1921, was Thirty thousand three hundred fifty-three dollars and twelve cents ($30,353.12). The net amount by which the estimated cost of such three vessels was increased by reason of all such changes in this paragraph mentioned as found on such audit, aggregated at least Five million five hundred three thousand seven hundred seventy-three dollars ($5,503,773). The net amount by which such fixed sum for profit for each of such three vessels was increased in accordance with such Article XIX by reason of all such changes aggregated at least the sum of One hundred thirty-five thousand three hundred fifty-three dollars and twelve cents ($135,353.12).

Sixty-fifth: From time to time during the period of the construction of such three vessels, Hulls numbered 2505-2507, the prices of materials used in the construction of such three vessels were less than the prices specified in Exhibit A to such contract numbered 465, while freight rates were from time to time increased over the rates in force at the time such contract was made. The net amount by which the estimated cost of such three vessels was in accordance with such contract decreased by reason of such decreases in such prices of materials and such

increases in such freight rates was, as found on such audit, One hundred eighty-seven thousand nine hundred eighty dollars and sixty-eight cents ($187,980.68).

Sixty-sixth: After the completion and delivery by the defendant of the vessels covered by each such contract and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the total cost of such vessels and of the vessels work on which was terminated as hereinabove set forth, and (except in the case of contract numbered 182, Exhibit 8 hereto) of the revised estimated cost thereof, as provided in Article XIX of each such contract, was made by the Fleet Corporation and completed on or about September 1, 1922, and (with the exception of the items of such cost hereinafter in Article Sixty-seventh hereof mentioned) the aggregate amount of the various items of cost and expenditures incurred by the defendant in the construction of the vessels under each such contract, determined in accordance with Article XVII of such contract and the revised estimated cost thereof were found by the Fleet Corporation upon such audit to be, and approved by it, as set forth in column H and column G, respectively, of such Exhibit 1.

Sixty-seventh: In addition to the items of cost so audited and so found and approved by the Fleet Corporation, the defendant incurred other items of cost in the construction of and on account of such vessels and within the description of the items of cost of such vessels by the provisions of Article XVII of each such contract agreed to be paid to the defendant as part of the actual cost of such ves-

sels, the aggregates of which are as set forth in column I of such Exhibit 1. The actual cost of the vessels under each such contract, determined in accordance with the terms and provisions of such contract, was as set forth in column J of such Exhibit 1.

Sixty-eighth: Under and pursuant to the provisions of Article XVIII of each such contract, all materials and supplies purchased for but not used in the construction of the vessels covered thereby became and remained the property of the Fleet Corporation and the value of such materials and supplies was determined by the Fleet Corporation on such audit. Such materials and supplies, instead of the value thereof being credited on the cost of such vessels were at the request of the Fleet Corporation delivered to it by the defendant, and by reason thereof the actual cost of such vessels was for the purpose of determining savings (or, in the case of contract numbered 182, profit), reduced by the amount of the value of such materials and supplies as found by the Fleet Corporation on such audit, as set forth in column K of such Exhibit 1.

Sixty-ninth: The amount of the difference between the revised estimated cost of the vessels under each such contract (column G) and the actual cost thereof reduced as aforesaid by the value of such surplus materials and supplies (column K), herein called savings, is as set forth in column L of such Exhibit 1. Such amount will be increased in the case of each such contract in the event, and to the extent, that the actual cost of the vessels thereunder shall be determined to be less than the

amount of the actual cost thereof set forth in column J of such Exhibit 1.

Seventieth: The aggregate of the fixed fees specified in, or calculated in accordance with, each such contract, is as set forth in column M of such Exhibit 1.

Seventy-first: The amounts which became payable from the Fleet Corporation to the defendant on account of savings under such contracts are as set forth in column N of such Exhibit 1.

Seventy-second: During the period of construction of the vessels under each such contract, and under and pursuant to the terms and provisions of such contracts, the defendant kept elaborate accounts of the cost of construction of such vessels and the Fleet Corporation from time to time checked such accounts. During and just after such period, upon its check of the defendant's accounts and as required by such contract, the Fleet Corporation paid the cost of construction (except certain costs disallowed by it) of such vessels and the greater part of the fixed fees specified therein. Upon the completion of such vessels, the Fleet Corporation made a complete audit of such accounts as hereinabove in Article Sixty-sixth hereof set forth and paid to the defendant a part of the amounts payable to it on account of savings. The amounts so paid by the Fleet Corporation to the defendant on account of such actual costs, such fixed fees and such savings are as set forth in columns O, P and Q, respectively, of such Exhibit 1.

Seventy-third: Although duly requested, the Fleet Corporation has failed and refused to pay the

amounts of such actual costs, such fixed fees and such savings set forth in columns R, S, T and U respectively, of such Exhibit 1. Such amounts, together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to the defendant.

The Requisitioned Ship Program.

Seventy-fourth: On or about the dates, respectively, listed in column C of Exhibit 3 hereto, the shipbuilders, respectively, listed in column A thereof and the former owners, respectively listed in column B thereof, made and entered into written contracts covering the construction of the vessels listed in column D thereof. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein referred to, marked Exhibits 29 to 72, inclusive, respectively, are annexed hereto and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Seventy-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about the dates respectively specified in column G of such Exhibit 3, the shipbuilders listed in column A thereof, respectively, and the Fleet Corporation, acting as principal and not as agent of the complainant, entered into contracts in writing whereby such shipbuilders agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein referred to in so far as the original contracts describe such vessels, the

materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions of the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all the right, title and interest of the shipbuilder in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the shipbuilders for the work of such completion, amounts equal to the payments set forth in the original contracts and not then paid. The Fleet Corporation also agreed that upon the completion of such vessels under each such contract a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contracts between it and such shipbuilders in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and Fore River, Moore, Harlan, Bethlehem Steel Company, Union and the defendant at all times dealt with such corporation thereunder solely on such basis.

Seventy-sixth: Thereafter, and on or about November 1, 1917, the defendant leased the shipyards of Fore River and Union and acquired the shipyard operated by Bethlehem Steel Company at Sparrows Point, Maryland, and, at the same time, made and entered into agreements with Fore River, Union, and Bethlehem Steel Company, respectively, whereby the defendant became obligated as their agent to perform all of their original contracts listed in such Exhibit 3, and became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts; and the defendant, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contracts between such corporations and the Fleet Corporation in Article Seventy-fifth hereof set forth.

Seventy-seventh: Moore Shipbuilding Corporation and Harlan were merged into the defendant on or about October 15, 1917, and the defendant thereby became obligated to perform all of the original contracts of Moore and Harlan listed in such Exhibit 3, and, similarly, became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts, and the defendant, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contracts between Moore and Harlan and the Fleet Corporation in Article Seventy-fifth hereof set forth.

Seventy-eighth: Thereafter, and on or about the 28th day of January, 1919, in consideration of an

agreement on the part of the Fleet Corporation to pay to the defendant for the work of constructing Hulls numbered 264, 265 and 267, the cost thereof plus ten dollars ($10) per ton deadweight capacity of such vessels, the defendant agreed to reduce the percentage of cost which the Fleet Corporation should pay to the defendant for profit for constructing Hulls numbered 297 and 298, from twenty-five per cent. (25%) to fifteen per cent. (15%).

Seventy-ninth: On or about the 28th day of February, 1918, the defendant and the Fleet Corporation entered into an agreement whereby they agreed to modify the provisions of the contracts covering the construction of Hulls numbered 442, 445, 446, 449, 134 and 135 with reference to the price to be paid by the Fleet Corporation for the work of completing such vessels so that such contracts should provide that the price which the Fleet Corporation would pay for such work should be the cost to the defendant of constructing the same, plus a profit of ten dollars ($10) per ton deadweight capacity of such vessels, and in consideration of the agreement by the defendant so to modify such contracts the Fleet Corporation agreed that it would pay to the defendant for such work such cost plus such profit of ten dollars ($10) per ton deadweight capacity of such vessels.

Eightieth: Thereafter, from time to time, the Fleet Corporation directed the defendant to employ overtime in the construction of Hulls numbered 268, 269, 272, 273, 115-116, 453-458, 169-170, 172-175, 143-149, 154 and 162-169, inclusive, and on or about the 11th day of January, 1918, agreed that it would pay

to the defendant in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 1.8125, in the case of Hulls numbered 115-116, and 2.625, in the case of the remainder of such vessels, (called the "overtime co-efficient") times the bonus (i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by the defendant to its employees in respect of such overtime. Thereafter, the defendant at its Union plant with the approval of the Fleet Corporation changed the basis of payments for week-day overtime in the construction of such vessels at such plant from time-and-a-half to doubletime and in addition, with like approval, used a substantially greater amount of Sunday and holiday time in the construction of such vessels than it had theretofore used, whereupon the defendant and the Fleet Corporation agreed that the Fleet Corporation would pay to the defendant in respect of all such overtime whether theretofore, or thereafter to be, employed by the defendant in the construction of such vessels at the direction of the Fleet Corporation, at the rate of 2.625 times such bonus for time and-a-half overtime, 1.8125 times such bonus in respect of week-day double-time overtime and 1.25 times such bonus in respect of Sunday and holiday double-time overtime. The defendant in accordance with such agreements and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficent

amounted to the sums set forth in column K of such Exhibit 3 hereto.

Eighty-first: Thereafter, and on or about June 17, 1918, the defendant and the Fleet Corporation entered into an agreement, whereby the Fleet Corporation agreed to reimburse the defendant, on the terms and conditions therein set forth, for certain payments which, to expedite the completion of Hulls numbered 453-456 and 169-170, 172-175, inclusive, the defendant proposed to make to its foremen, assistant foremen, leading men and other heads of departments. The amounts which were so paid by the defendant and which the Fleet Corporation agreed to reimburse to the defendant as aforesaid, are as set forth in column L of such Exhibit 3.

Eighty-second: From time to time during the period of construction of Hulls numbered 268, 269, 272, 273, 115-116, 453-458, 163, 167, 169-170, 172-175, 140, 142, 143-149, 154, and 162-169, inclusive, the former owners, and, later, the Fleet Corporation, under and pursuant to the terms of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners, and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of each such contract it was agreed should be added to the price of such vessels was as set forth in column J of such Exhibit 3.

Eighty-third: From time to time during the period of construction of Hulls numbered 169-170 and 174-

175, inclusive, the rates of wages paid by Bethlehem Steel Company and later, by the defendant in the construction of such vessels exceeded by more than ten per cent. (10%) the rates of wages which were paid by said Bethlehem Steel Company at the date of the original contracts therefor, Exhibits 51-52 and 55-56, inclusive, hereto. Sixty cents ($0.60) per deadweight ton for each one per cent. (1%) so paid in excess of ten per cent. (10%) over the rates of wages at the date of such contracts, respectively, paid by Bethlehem Steel Company amounted to the sums specified in column M of such Exhibit 3.

Eighty-fourth: In the case of Hulls numbered 272-273, 169-170, 173 and 174-175, inclusive, the original contracts therefor provided that the purchaser would pay to the shipbuilder for each ton that the deadweight carrying capacity of each such vessel should exceed the guaranteed deadweight carrying capacity thereof, respectively, the amounts specified in such contracts. Upon the completion of such vessels they, respectively, had the deadweight carrying capacity specified in column F of such Exhibit 3 and there became due from the Fleet Corporation to the defendant on account thereof the amounts specified in column N of such Exhibit 3.

Eighty-fifth: On or about the 4th day of November, 1917, the Shipbuilding Labor Adjustment Board made an award whereby it, among other things, ordered and directed the employers of labor in the shipyards of the San Francisco Bay District (in which the shipyard of Union was located) to place in effect certain rules as to conditions of employment including a schedule of minimum wages, re-

troactive to September 22, 1917, and on or about the 24th day of November, 1917, the Fleet Corporation ordered and directed the defendant immediately to put into effect, at such shipyard, the schedule of wages so ordered and directed by such Adjustment Board. On or about the 10th day of December, 1917, the Fleet Corporation notified the defendant that the Fleet Corporation would pay, effective on and after December 15, 1917, a war service payment of ten per cent. (10%) to all employees of the defendant at such shipyard who should work six consecutive days in any week, the payments to be computed on straight time at the minimum rate provided in such award of such Adjustment Board, and that the Fleet Corporation would reimburse the defendant for such payments made by the defendant, and also for the increases in wages paid by the defendant by reason of such award of such Adjustment Board first above mentioned. From time to time thereafter the Fleet Corporation notified the defendant of revisions in the adjustment of wages, hours and conditions of labor in shipbuilding plants and directed the defendant to place such revisions in effect in such shipyard, in each case agreeing to reimburse the defendant in full for all such war service payments and all payments made on account of such increases in wages directed by such award of such Adjustment Board, as from time to time revised. Thereafter, and on or about February 1, 1918, the Fleet Corporation directed the defendant to pay said war service payment as a part of the regular wages of its employees in addition to the wages provided by the awards of such Adjustment Board. Thereafter, the

Fleet Corporation ordered and directed certain increases in the wages paid piece-workers at such shipyards, and on or about April 23, 1918, agreed to reimburse the defendant for such increases in the wages of piece-workers authorized by it. Thereafter, and on or about the 24th day of October, 1918, such Adjustment Board ordered and directed certain additional increases in the wages of employees employed in the shipyards on the Pacific Coast, retroactive to August 1, 1918, and on or about November 5, 1918, the Fleet Corporation ordered and directed the defendant to place such schedule in effect in such shipyard and agreed to reimburse the defendant for added wage costs incurred thereby. In the months of November and December, 1917, the Fleet Corporation directed the defendant to put into effect in its East Coast plants, namely, its Fore River, Moore, Harlan and Sparrows Point plants, on all requisitioned vessels, the rates of wages then prevailing at the respective Navy Yards nearest thereto. Thereafter, and on various dates, to wit, on February 14, 1918, for the Harlan and Sparrows Point plants, on March 1, 1918, again for the Sparrows Point plant, on April 6, 1918, for the Fore River and Moore plants, and on October 24, 1918, again for all four plants, the shipbuilding Labor Adjustment Board increased the rates of wages payable to labor engaged in ship construction at such plants and the Fleet Corporation ordered and directed the defendant to put into effect such increased rates and agreed to reimburse the defendant for the increased cost of labor incurred on account thereof. The increased cost of labor actually incurred by the defendant in the construction of Hulls

numbered 268, 269, 272, 273, 115, 116, 453-456, 457, 458, 140, 142-149, 172, 173, 154 and 162-169, inclusive, pursuant to the aforementioned orders and directions of the Fleet Corporation and for which the Fleet Corporation agreed to reimburse the defendant as aforesaid, was as set forth in column M of such Exhibit 3.

Eighty-sixth: The defendant completed the vessels listed in column D of such Exhibit 3 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the respective shipyards listed in such Exhibit on or about the dates therein listed, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant duly performed all the terms and conditions of all the contracts therefor on its part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Eighty-seventh: In addition to the materials which entered into the construction of Hulls numbered 297 and 298 the cost of which was paid directly by Fore River and the defendant, there were other materials which entered into the construction of such vessels which were obtained for Fore River and the defendant by Luckenbach, the former owner, from other contractors, the cost of which aggregating Two hundred thirty-three thousand six hundred dollars ($233,600) was paid by said Luckenbach direct to such contractors, so that the total

actual cost of constructing Hulls numbered 297 and 298, determined in accordance with the provisions of such contracts, Exhibits 36 and 37 hereto, was Five million two hundred twenty-five thousand three hundred thirty-nine dollars and thirty-one cents ($5,225,339.31).

Eighty-eighth: Upon the completion and delivery of Hulls numbered 297 and 298, the defendant purchased from the Fleet Corporation certain surplus materials left over from the materials used in constructing such vessels for the sum of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), and the defendant agreed that, for the purpose of determining the profit payable in respect of the construction of such vessels, there should be deducted from the total cost of constructing the same such sum of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), thus reducing such total actual cost for such purpose to the sum of Five million one hundred ninety-three thousand one hundred forty-two dollars and eighty-nine cents ($5,193,142.89).

Eighty-ninth: After the completion and delivery of the vessels under each such contract and the acceptance thereof by the Fleet Corporation, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the defendant on account of the construction of such vessels to be as set forth in

columns I, J, K, L, M, N, O, P and Q of such Exhibit 3.

Ninetieth: From time to time during and after the period of construction thereof, the former owners, and, later, the Fleet Corporation, paid to the shipbuilders and, later, to the defendants, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 3.

Ninety-first: Although duly requested, the Fleet Corporation has failed and refused to pay the amounts due from and unpaid by the Fleet Corporation to the defendant on account of the construction of such vessels, set forth in column S of such Exhibit 3. Such amounts together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to the defendant.

Delay in Making Audits.

Ninety-second: The making of the audit of the total cost of the vessels under each such contract listed in Exhibits 1 and 3 hereto, as hereinabove in Articles Sixty-sixth and Eighty-ninth hereof set forth, was unreasonably delayed by the Fleet Corporation through no fault of the defendant beyond the date when such audit, pursuant to the agreement therefor, should have been made to the defendant's damage in each such case, as set forth in Exhibit 4-A hereto.

Miscellaneous Items.

Ninety-third: During the reaudits hereinabove in Articles Sixty-sixth and Eighty-ninth hereof men-

troned, the Fleet Corporation on its own responsibility, employed Perley Morse and Company, a firm of accountants, to audit certain of the accounts of the defendant under certain of the contracts herein set forth and paid to such firm more than Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) therefor. Thereafter, the Fleet Corporation arbitrarily and without any agreement or liability of the defendant to pay therefor deducted such amount of Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from an undisputed balance due from the Fleet Corporation to the defendant on a certain contract between them covering the construction of certain propelling machinery, a copy of which contract, marked Exhibit 73, is annexed hereto and is made a part hereof as if herein fully set forth. The defendant completed such equipment in accordance with the terms and provisions of such contract and delivered the same on or before February 1, 1921, and duly performed all the terms and conditions of such contract on its part to be performed. The Fleet Corporation in accordance with the terms and provisions of such contract paid for such equipment except such sum of Ninety thousand nineteen dollars and fifty-five cents ($90,019.55), which sum, although duly requested, it has failed and refused to pay to the defendant. Such sum is now due from the Fleet Corporation to the defendant with interest thereon from February 1, 1921.

Ninety-fourth: On or about February 18, 1918, the defendant, The Pusey & Jones Company, a Delaware corporation, and the Fleet Corporation entered into an agreement, whereby the defendant and

said The Pusey & Jones Company agreed to lease certain land belonging to The Pennsylvania Railroad Company in Wilmington, Delaware, and to erect barracks thereon to provide housing facilities for United States Troops on guard duty at the shipyards of the defendant and of said The Pusey & Jones Company at Wilmington, Delaware; and the Fleet Corporation agreed to reimburse the defendant and said The Pusey & Jones Company for the expense thereof. Thereafter the defendant and said The Pusey & Jones Company leased such land from the Pennsylvania Railroad Company and constructed such barracks thereon in accordance with plans approved by the War Department of the United States of America, and the Fleet Corporation reimbursed the defendant and said The Pusey & Jones Company from time to time for the expenditures made, both as rental for such land and for the cost of construction of such barracks. By the terms of the agreement of lease of such land it was provided, among other things, that upon the termination of such agreement of lease the lessees would remove from such land the buildings erected thereon and restore such land to its original condition. After the termination of such agreement of lease, in the latter part of the year 1919, the Fleet Corporation, in accordance with the terms thereof, removed such barracks and on or about March 29, 1920, entered into an agreement with the defendant whereby the defendant agreed to provide for the restoration of said land and the Fleet Corporation agreed to reimburse the defendant for the cost thereof. In accordance with such agreement, and at the direction and with the approval of the Fleet Corpo-

ration, the defendant procured the restoration of such land to its original condition at a total cost to the defendant of Two thousand five hundred and seventy dollars ($2,570). Upon the restoration thereof, there became due from the Fleet Corporation to the defendant the sum of Two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the defendant from the Fleet Corporation, with interest thereon from June 1, 1920.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, and not waiving but insisting upon the defenses hereinbefore pleaded, but in addition thereto, says:

Ninety-fifth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Mr. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, however, by President

Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Ninety-sixth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of

the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companie named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Ninety-seventh: Immediately thereafter, on May 2, 1918, in accordance with said understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

"Resolved that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Ninety-eighth: Charles M. Schwab faithfully carried out said understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and any of the defendants herein.

Ninety-ninth: All of the contracts between the Fleet Corporation and the defendant listed in Article Twenty-ninth of the bill of complaint and in Exhibit 1 hereto, with the exception of contracts numbered 299, 300, 301, 312, 313, 314, 340 and 465, were agreed upon and signed before Mr. Schwab entered upon his duties as Director General of the Fleet Corporation. Of the exceptions, contracts numbered 299, 300, 301, 312, 313 and 314, Exhibits 15-20, inclusive, hereto, were simply replicas of earlier contracts, except that the fixed fees and estimated costs specified in such later contracts were lower than the fixed fees and estimated costs fixed in such earlier contracts. Three of such contracts, to wit, numbers 312, 313 and 340, Exhibits 18, 19 and 21

hereto, were cancelled and therefore are not involved in the claim of the complainant that Charles M. Schwab should have modified all such contracts. The remaining exception, contract numbered 465, Exhibit 22 hereto, was dated July 15, 1918, but, as in the case of all such other contracts, Charles M. Schwab had nothing to do with the negotiation of such contract.

One Hundredth: Finally, the vessels covered by the contracts so listed in Article Twenty-ninth of the bill of complaint and in Exhibit 1 hereto were of unusual design and required a comparatively long period of time for the construction thereof, and during the time that Charles M. Schwab was Director General of the Fleet Corporation such vessels had not been sufficiently completed for any one to estimate with any degree of accuracy what the ultimate cost of such vessels would be.

As a further separate and special defense to each and every claim of the complainant set forth in the Bill of Complaint, the defendant, not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, repeats by reference all and singular the averments therein made, and says:

One Hundred First: Upon the completion and delivery of the vessels under each of the contracts referred to in Exhibits 1 and 3 hereto, and the completion of the special improvements and additional facilities under each of the contracts and authorizations referred to in Exhibit 2 hereto, the defendant prepared and submitted to the Fleet Corporation statements of account showing the balances due and

unpaid by the Fleet Corporation on account of such vessels and special improvements and plant facilities. At the same time the Fleet Corporation undertook and thereafter proceeded with the audits of the defendant's accounts hereinabove in Articles Sixty-sixth and Eighty-ninth hereof mentioned, and the defendant cooperated with and offered every assistance to the Fleet Corporation in making such audits and presented to the Fleet Corporation all of its claims on account of all the transactions herein set forth.

One Hundred Second: Upon the completion of such audits the Fleet Corporation referred all of the claims of the defendant to the Honorable William Marshall Bullitt, one of its special counsel, for consideration and report thereon, and the defendant again presented its claims to said Bullitt and made various offers of compromise to the Fleet Corporation with a view to effecting a speedy settlement of its claims substantially in accordance with Exhibits 1, 2, 3 and 4A hereto.

One Hundred Third: On information and belief, the defendant avers that thereafter and in the month of February, 1923, said Bullitt made his report on such claims and that in such report he found the net amount due from and unpaid by the Fleet Corporation to the defendant on account of the transactions herein set forth to be several millions of dollars.

One Hundred Fourth: Thereupon the Fleet Corporation ignored the report of said Bullitt and formally notified the defendant that the United States Shipping Board had approved the recommendation of the Standing Committee on Claims of the

Fleet Corporation that the Fleet Corporation did not owe the defendant anything on account of the transactions herein set forth, but that, on the contrary, the defendant owed the Fleet Corporation upwards of Eleven million dollars ($11,000,000).

One Hundred Fifth: At no time during such audits and such hearings before Bullitt was there any suggestion by the Fleet Corporation, or by any of the members of the United States Shipping Board, that there was any fraud in any of the transactions herein set forth, or that any overpayments on account of such transactions had been made through mistake of fact or of law, although by reason of such audits of the defendant's accounts from time to time during the construction and after the completion of such vessels, the Fleet Corporation was in a position to know all of the material facts with respect thereto, and the defendant had made a full disclosure to the Fleet Corporation of all such facts, and the Fleet Corporation and the United States Shipping Board unreasonably and unseasonably delayed to the prejudice of the defendant this action.

One Hundred Sixth: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant or of any of the defendants in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendants or any of them, and the complainant is not the proper party to bring this action.

Claim for Credit.

One Hundred Seventh: Not waiving but insisting on the defenses pleaded in the foregoing answer, but in addition thereto, the defendant repeats and reavers the averments contained in Articles Thirty-seventh, Fifty-fourth to Ninety-fourth, inclusive, and One Hundred First to One Hundred Fourth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth should be reduced by the amounts now due and owing to the defendant on account of such transactions as hereinbefore set forth, so that the complainant should recover nothing.

Counterclaim.

One Hundred Eighth: Not waiving but insisting on the defenses pleaded in the foregoing answer, but in addition thereto, the defendant repeats and reavers the averments contained in Articles Thirty-seventh, Fifty-fourth to Ninety-fourth, inclusive, and One Hundred First to One Hundred Fourth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name, the defendant should recover of the complainant the sum of Eight million eight hundred thirty-nine thousand eight hundred twenty dollars and eighty cents ($8,839,820.80), together with interest on Two thousand five hundred seventy

dollars ($2,570) from June 1, 1920, on Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from February 1, 1921, and on Eight million seven hundred forty-seven thousand two hundred thirty-one dollars and twenty-five cents ($8,747,231.25) from September 1, 1922, and the costs and disbursements of this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with costs of this action.

2. That if the above prayer be not granted, then that the defendant recover of the complainant the sum of Eight million eight hundred thirty-nine thousand eight hundred twenty dollars and eighty cents ($8,839,820.80), together with interest on Two thousand five hundred seventy dollars ($2,570) from June 1, 1920, on Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from February 1, 1921, and on Eight million seven hundred forty-seven thousand two hundred thirty-one dollars and twenty-five cents ($8,747,231.25), from September 1, 1922, and the costs and disbursements of this action.

3. That the defendant have such other and further relief as may be just and equitable.

Charles Sinkler,
Solicitor for the Defendant,
Bethlehem Shipbuilding Corporation, Ltd.

Cravath, Henderson & de Gersdorff,
of Counsel.

July 22, 1925.

Defendant's Answer
(Bethlehem Shipbuilding Corp., Ltd.)
Exhibit 1

EXHIBIT 1

THE CONTRACT SHIP PROGRAM

Line No.	A — Contract between the Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for the construction of	B	C — Date of such contract	D — Date of Delivery—On or before	E — Estimated cost of the vessels specified in the contracts	F — Increase in wages, to be added to estimated cost	G — Net cost of changes and extras to be added or subtracted from estimated cost	H — Estimated cost of the vessels specified in the contracts, as increased (decreased) by the amounts shown in columns D to G inclusive	I — Actual cost of the vessels as stated by the Fleet Corporation on its final audit	J — Items of cost disallowed by the Fleet Corporation but which were included in the actual cost of the vessels, as shown in the contracts	K — Actual cost of the vessels, as determined in accordance with such contracts, as shown in column H plus or minus column J	Line No.	L — Savings (col. K)	M — Fixed fees specified in or calculated in accordance with such contracts	N — Amounts which become payable from time to time to the defendant on account of savings (not to exceed 10% of L)	O — Amounts paid by the Fleet Corporation to the defendant on account of		Actual Cost	Fixed Fees	Savings
	No. 177, Exhibit 5 hereto		Dec. 31, 1917	July 31, 1920	$25,440,000.00	$2,508,532.11	$ 60,495.28	$28,008,997.39	$22,480,047.20	$72,000.00	$22,561,047.20	1	$5,596,521.32	$2,520,000.00	$2,753,260.66	$22,731,035.96	$2,268,000.00	$1,980,242.43	$229,887.76
2	178	" 6	"	Dec. 31, 1920	8,866,000.00	1,331,183.17	180,959.00	10,405,142.17	9,303,599.15	238,682.32	10,058,262.27	2	382,312.74	855,000.00	191,150.37	9,793,480.18	769,500.00 ¶	783,000.00	62,669.82
3	179	" 7	"	June 14, 1919	6,230,000.00	514,436.38	24,328.00	7,062,764.38	5,589,605.41	30,000.00	5,589,605.41	3	1,499,944.31	600,000.00	749,972.15	5,657,186.58	539,958.90	515,222.37	60,091.10
4	182	" 8	"	April 30, 1919						12,000.00	11,266,351.41	4		1,121,575.71		11,495,431.22	800,580.00		107,693.79
5	183	" 9	"	April 30, 1919	5,595,000.00	776,639.20	27,791.00*	6,358,848.20	5,155,881.13	44,291.72	5,360,174.85	5	1,018,638.79	551,000.00	509,319.40	5,368,867.81	499,500.00	402,056.25	8,693.96
6	184	" 10	"	Nov. 21, 1919	5,865,000.00	994,934.80	525,576.24	7,385,511.04	6,345,185.69	30,000.00	6,179,435.69	6	1,254,661.60	670,000.00	637,300.80	6,543,048.69	656,700.92	376,053.79	30,621.67
7	191	" 11	"	May 8, 1919	8,514,000.00	621,947.17	103,760.52	9,239,707.69	6,370,086.31	20,000.00	6,390,086.31	7	2,853,825.25	851,400.00	1,426,914.13	6,403,741.11	760,260.00	1,100,000.00	13,654.89
8	196	" 12	"	Sept. 27, 1918	1,295,000.00	152,318.73	5,960.11	1,453,238.84	1,124,446.54	6,500.00	1,130,946.54	8	302,312.30	129,500.00	151,156.15	1,142,852.40	115,400.50	112,656.84	15,497.41
9	220	" 4	"	Mar. 18, 1918	11,865,000.00	1,969,148.85	124,402.00	13,958,550.85	10,911,003.79	65,865.94	10,976,869.64	9	3,014,799.98	1,175,000.00	1,507,399.99	11,149,326.76	1,057,500.00	837,579.61	17,497.22
10	221	" 5	(cancelled)	April 22, 1918	4,503,000.00	335,271.90	17,604.30	4,855,876.20	3,226,882.06	10,800.00	3,237,682.06	10	1,618,194.14	415,000.00	647,441.16	3,942,727.40	373,500.00	455,000.00	11,045.39
11	299	" 2	April 30, 1918	Dec. 22, 1919	5,550,000.00	635,349.36	35,581.20	6,174,788.36	4,874,618.67	44,291.76	4,918,912.43	11	1,274,372.15	555,000.00	637,186.08	4,896,985.21	499,500.00	479,402.75	21,927.22
12	300	" 3	July 30, 1920	July 30, 1920	6,000,000.00	899,911.67	41,939.00	6,940,850.67	5,127,782.31	30,000.00	5,157,782.31	12	1,783,033.44	600,000.00	892,966.82	5,160,180.02	540,000.00	607,650.13	6,737.42
13	301	" 17	"	July 22, 1921	14,625,000.00 (6)	1,531,967.62	46,532.03	20,403,499.65	16,314,777.23 (1)	47,117.00	16,314,777.23 (1)	13	5,064,974.75	1,952,474.45 (2)	2,532,487.38	16,172,964.79 (3)	1,220,854.85 (4)	1,744,757.57	20,181.00
14	312	" 18	"	"	"	"	"	"	313,594.84	"	313,594.84	14		61,319.49	"	313,594.84	54,000.00	"	2,359.49
15	313	" 19	(canceled)	"	"	"	"	"	488,192.25	"	488,192.25	15		88,819.22	"	431,567.18	21,450.00	"	64,044.29
16	314	" 20	(canceled)	"	"	"	"	"	13,057,316.42	79,989.10	13,137,305.52	16	1,295,127.78	1,154,000.00	647,563.89	13,150,053.43	1,038,577.35	136,389.98	12,748.37
17	340	" 21	(canceled)	June 21, 1921								17							
18	465	" 22	"	July 15, 1921	12,480,000.00 (6)	1,509,378.86	5,503,773.00	19,303,971.38 (7)	18,296,591.08		18,296,591.08 (8)	18	4,197,289.20	1,599,621.49 (9)	750,000.00	17,947,640.40(10)	1,064,000.00 (11)	348,950.68	533,621.49
19												19							
20	TOTAL				$155,603,390.63	$140,542,098.40	$739,541.84	$141,279,640.24	$136,073,912.55			19	$30,745,243.14	$14,833,750.56	$14,022,976.98	$141,738,922.24	$12,758,901.58	$9,814,633.05	$679,282.00

Line No.	G — Amounts paid and to be paid by the Fleet Corporation to the defendant on account of		H — Actual cost of the vessels as stated by the Fleet Corporation on its final audit	I — Items of cost disallowed by the Fleet Corporation but which were included in the actual cost of the vessels, as shown in the contracts	J — Actual cost of the vessels, as determined in accordance with such contracts, as shown in column H plus or minus column I	Line No.	K — Savings (col. J)	L — Fixed fees specified in or calculated in accordance with such contracts	M — Amounts which become payable from time to time to the defendant on account of savings (not to exceed 10% of L)	N — Amounts paid by the Fleet Corporation to the defendant on account of		O — Amounts paid and to be paid by the Fleet Corporation to the defendant on account of		P — Amounts due from and unpaid by the Fleet Corporation to the defendant		Q — Amounts which the Fleet Corporation claims it is entitled to withhold from the defendant on account of the matters referred to in the answer, and included in the figures of Amounts paid by the Fleet Corporation to the defendant (see col. 6 of the Answer)	Line No.
	Actual Cost	Fixed Fees										Actual cost	Fixed Fees	Savings		
	$22,731,035.96	$2,268,000.00	$1,980,242.43	$229,887.76	$252,000.00	$772,018.23	$755,829.47	1
	9,793,480.18	769,500.00 ¶	783,000.00	62,669.82	85,500.00	77,346.35	62,846.44	2
	5,657,186.58	539,958.90	-515,222.37	60,091.10	85,500.00	234,748.78	227,168.71	3
	11,495,431.22	800,580.00		107,693.79	171,000.00		194,495.92	4
	5,368,867.81	499,500.00	402,056.25	8,693.96	53,500.00	107,263.15	154,070.19	5
	6,543,048.69	656,700.92	376,053.79	30,621.67	85,500.00	157,267.10	167,276.51	6
	6,403,741.11	760,260.00	1,100,000.00	13,654.89	85,140.00	326,934.13	290,722.89	7
	1,142,852.40	115,400.50	112,656.84	15,497.41	17,100.00	14,099.44	20,497.41	8
	11,149,326.76	1,057,500.00	837,579.61	17,497.22	117,500.00	667,840.31	614,861.38	9
	3,942,727.40	373,500.00	455,000.00	11,045.39	41,500.00	222,897.77	222,897.77	10
	4,896,985.21	499,500.00	479,402.75	21,927.22	53,500.00	157,781.31	157,781.31	11
	5,160,180.02	540,000.00	607,650.13	6,737.42	59,500.00	225,156.29	220,758.66	12
	16,172,964.79 (3)	1,220,854.85 (4)	1,744,757.57	20,181.00	121,419.80	787,729.81	961,162.07	13
	313,594.84	54,000.00		2,359.49			73,904.42	14
	431,567.18	21,450.00		64,044.29	27,419.22		64,044.29	15
	13,150,053.43	1,038,577.35		136,389.98	12,748.37	111,423.55	613,948.22	16
						111,173.58	276,173.58	17
	17,947,640.40(10)	1,064,000.00 (11)		348,950.68	533,621.49	750,000.00	1,634,572.17	18
								19
	$141,738,922.24	$12,758,901.58	$9,814,633.05	$679,282.00	$2,351,022.56	$5,009,343.93	$6,881,084.49	19

** Figures in italics are deductions or overpayments, as the case may be*

1—Includes $699,740.46 cost of canceled Hulls 1685-1687
2—Includes $69,974.65 profit on canceled Hulls 1685-1687
3—Includes $914,685.34 paid on canceled Hulls 1685-1687
4—Includes $26,604.80 paid on canceled Hulls 1685-1687
5—Amount payable under Article XXIV of contract 340 on account of cancellation (after deducting $10,000 on account of office building).
6—Excludes estimated cost of canceled vessels.
7—After deducting $187,980.60 on account of decreases in price of materials and increases in freight rates.
8—Includes $1,835,310.74 cost of canceled Hulls 2508-2510
9—Includes $721,562.13 profit on canceled Hulls 2508-2510
10—Includes $2,707,441.30 loss on canceled Hulls 2508-2510
11—Includes $200,000 paid on canceled Hulls 2508-2510

EXHIBIT 10.

CONTRACT

Between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

Elizabethport, New Jersey

Owner's Contract No. 184—S. C.
Owner's Hull Nos. 1169-1174.
Contractor's Hull Nos. 2118-2123.

Dated December 31, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain

real estate situated at Elizabethport, in the State of New Jersey, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) six (6) tug boats, complete with propelling machinery, auxiliaries and complete equipment, in accordance with drawings and specifications furnished by the Owner and hereto attached and made a part of this contract:

Now, therefore, this Contract Witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of six (6) tugboats in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor at said Elizabethport.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

III.

TIME OF DELIVERY OF VESSELS.

1. It is agreed by both parties that time is of the essence of this contract. Unless prevented by causes of delay set forth in Paragraph 2 of this Article III the work under this contract shall be prosecuted at all times with the utmost vigor and dispatch and without interruption. The Contractor shall use every endeavor to deliver the first of said vessels in the month of September, 1918, and two vessels in each of the months of October and November and one vessel in the month of December, 1918.

DELAY.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor

but not delivered, or by reason of other causes beyond the reasonable control of the Contractor among which (but not exclusive of others) are strikes, fires, lightning, earthquake, floods, riots, insurrections or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery to be furnished the Contractor for use hereunder or by reason of instructions given by the Owner under Articles X and XXIV hereof, beyond the time herein stated, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof; *provided, however,* that no request for extension of the contract time shall be considered unless the Contractor within thirty (30) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that the parties hereto shall not agree as to such extension, such extension shall be determined in accordance with Article XX hereof.

IV.

The materials and parts which shall be used in the construction of the vessels shall be of the qual-

ity and characteristics best adapted to the various purposes for which they may be used in so far as they conform to the specifications and requirements of the Shipping Bureau. The Contractor shall supply such assistance as may be required by the surveyors of the Shipping Bureau and/or the representatives of the Owner, in making any tests and inspections of such material and parts at said shipyard of the Contractor as may be considered necessary by such surveyors or representatives.

V.

The workmanship on said vessels in detail and finish in all parts shall be first-class, and of the very best quality usual in American seagoing vessels of this class, and shall at all times be subject to the inspection of the inspectors of the Shipping Bureau and of those of the Owner as aforesaid, and the surveyors and inspectors may with the approval of the Owner or his duly authorized representative, direct the replacement of any unfit workmanship or materials.

VI.

INSPECTION, DISTRICT OFFICER.

The vessels shall be inspected during the progress of the work by the surveyors of the Shipping Bureau and the inspection certificate of the highest rating of said organization for seagoing vessels of this type must be obtained and furnished when and as each vessel is ready for delivery. Tonnage certificates in duplicate shall also be obtained from the Commissioner of Navigation and furnished at the time of delivery of the vessels to the Owner. All

expenses of such inspection and certificates shall be considered as part of the actual cost of the vessel. In addition to the surveyors of the Shipping Bureau, the Owner will employ at its own expense, one or more inspectors of recognized ability in their profession to supervise and assist in the construction of these vessels; they, and their assistants, described herein as the Owner's inspectors, will represent the Owner and will be required to watch closely the construction. Such one of them as shall, from time to time, be so designated by the Owner will act as representative of the Owner, and be designated as the District Officer, and to him shall be referred all questions arising under this contract at said shipyard. His decision on all important questions shall be in writing, and when rendered under his general authority or after approval by the Owner shall be binding, subject in all cases to appeal as provided in Article XX hereof.

VII.

TRIALS; DELIVERY.

Before final acceptance by the Owner of each vessel, the Owner may require a dock trial of not exceeding eight (8) hours, and/or sea trial at maximum draft and specified speed, or at a lesser draft and corresponding operating speed as determined by the Owner, at some point convenient to said shipyard of the Contractor of not exceeding four hours, which shall be to the satisfaction of the Owner. Should any vessel fail to meet such actual tests, then the Contractor agrees to take such additional steps as the Owner may require in order to put

such vessel in a condition where it will meet such tests. After the satisfactory completion of the trials and of all other work included in the plans, specifications and authorized changes, each vessel shall be delivered afloat to the representative of the Owner at said shipyard, and shall thereupon be accepted, and the Owner shall take possession of the vessel and be responsible for the safety thereof. The Owner shall remove such accepted vessel from said shipyard within such time as will prevent encumbrance of the waterfront or interference with the work of the Contractor on other vessels.

VIII.

TERMINATION OF CONTRACT.

In case of failure or omission of the Contractor, at any stage of the work prior to completion, from any cause or causes within its control, which shall exclude causes of delay mentioned in Paragraph 2 of Article III hereof, to go forward with the work and/or make progress towards its completion satisfactory to the Owner, the Owner may, except as qualified in this Article, terminate this contract. In that event the Owner may immediately enter that part of said shipyard used for the construction of these vessels, and such additional part thereof as may be necessary, and take possession of it, and of the vessels, materials and equipment and shall assume all commitments properly chargeable to the work hereunder. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the

vessels and of all materials on hand and/or ordered or contracted for and applicable thereto, and a copy of such statement and inventory shall be furnished to the Contractor. Concurrently with the making of such statement and inventory, the Owner may proceed with the construction of the vessels either at said shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in such statement and inventory. In case the Owner shall thus terminate the contract the total amount to be paid hereunder, including all payment theretofore made, shall be the actual cost (computed in the manner defined in Article XVII hereof) of all work done under this contract up to the time of termination, plus such part of the fixed profit of the Contractor hereinafter provided for as the Owner may decide to have been justly earned; *provided, however*, that if within thirty (30) days after written notice to the Contractor by the Owner of the latter's intent to terminate this Contract, the Contractor can show to the satisfaction of the General Manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control as aforesaid, the Contractor shall be allowed such opportunity as the General Manager of the Owner may deem reasonable to complete the work.

INSOLVENCY OF CONTRACTOR.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the

Owner may cancel this contract, and may, and is hereby empowered forthwith to enter, take possession of, and complete the work, without giving notice thereof to the Contractor.

INSURANCE.

The Contractor agrees to procure, so far as procurable at reasonable cost, and thereafter maintain such insurance, in such forms, on such property, to cover such contingencies, in such amounts, and for such periods as the Owner shall approve or require, and to make recommendations to the Owner regarding the various risks against which insurance should be carried. The policies shall provide that the loss, if any, shall be payable to the Owner for the use of the Owner and/or the Contractor, as their respective interests may appear. The Owner may dispense with insurance, in whole or in part. Should any vessel be constructively or actually totally destroyed and/or a total loss, no additional vessel shall be built under this contract in order to replace it and to complete the six (6) vessels herein provided for, unless required by the Owner. The Owner shall pay, within sixty (60) days after such total loss or destruction, to the Contractor for its profit for work done on any such vessel, up to the time of such total loss, or destruction, such sum as the General Manager of the Owner may determine to be fair and just, subject to arbitration as provided for in Article XX. In the event of such actual or constructive loss the Owner shall pay for all materials on hand intended for such vessels and such materials as the Contractor may have ordered

for such vessels, as well as all other items of cost incurred up to the time of such loss.

IX.

CASUALTY INSURANCE.

The Contractor agrees to insure to the satisfaction of the Owner, so far as insurance shall be procurable at reasonable cost, against the liability of the Contractor and/or the Owner for injuries to or death of employees, workmen, or the public or others in, on, or about the work covered by this contract.

PATENTS.

The Contractor shall to the best of its ability protect the Owner against claims for any infringement of patents or patent rights and for the use of any patented articles embodied or to be embodied in the vessels, by suitable agreement satisfactory to the Owner as to the use of such patents or patent rights. The Owner will assume all costs, expenses, and damages which it or the Contractor may be obliged to pay to procure such agreements, or to pay by reason of any infringement of patents or patent rights of the use of patented articles not covered by such agreements, pursuant to a decree by a proper court in any litigation involving the use of such patents, but the Contractor shall assist the Owner at the latter's expense, save for services of the Contractor's employees, in furnishing such evidence as to the use of the patents and other matters of fact as may be required by the Owner in such litigation. The Contractor shall promptly

notify the Owner in writing of any claims of infringement that may from time to time be brought to the Contractor's attention.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XI.

PROTECTION OF PROPERTY.

The Contractor shall provide the usual protection for the property of the Owner and of the Contractor at said shipyard, and shall furnish such additional protection as the Owner may require. Such additional protection, however, shall be paid for by the Owner.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under

this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however, and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

INSPECTOR'S CERTIFICATE.

No inspector's certificate given or payment made under the terms of this contract (except on final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be a waiver of the right of the Owner to direct the replacement of unsatisfactory workmanship and/or materials.

XIV.

LIENS AND TAXES.

The Contractor will keep the vessels in the course of construction free and clear of all claims, liens or encumbrances of any kind or description (except liens or encumbrances accruing through the default of the Owner, and/or for which the Owner shall be responsible and except claims and liens of the Contractor), and shall, before delivery of each vessel, show to the satisfaction of the Owner that such vessel is free and clear from any claims, liens and encumbrances except as aforesaid. The Contractor agrees that it will, to the extent that funds are available under the terms of Article XV, promptly pay for all labor, material or other service rendered to it in connection with the work under this contract.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to

provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid fund, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the six (6) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be

necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted prior to the date of this contract and the proceeds of which shall be used or shall have been or shall be invested in plant, equip-

ment, etc. that shall be used in the performance of work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XVIII.

SALVAGE OF SCRAP.

All materials and supplies purchased for but not used in the construction of the vessels herein contracted for shall be and remain the property of the Owner and the value thereof shall be credited on the cost of the vessels. The salvage, value of scrap, waste, containers, etc., originally purchased for the vessels and disposed of during the life of this contract shall be credited to the cost of the vessels.

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918 at the Navy Yard of the United States at Brooklyn in the City of New York, of Three hundred thousand dollars ($300,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Three hundred thousand dollars ($300,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Thirty thousand dollars ($30,000) for such vessel. Should the actual cost be

less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Thirty thousand dollars ($30,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFIT WHEN PAYABLE.

Said fixed sum for profit of Thirty thousand dollars ($30,000) shall be paid as follows:

To the total of the approved monthly bills of actual costs of the vessels there shall be added and paid ten per cen (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said Thirty thousand dollars ($30,000) determined as hereinbefore provided shall become immediately due and payable.

XX

DISPUTES.

In case the parties fail to agree as to any matter contained in or connected with this contract, or if any doubt or dispute arises as to the meaning, construction or effect of this contract, or of any of the provisions or covenants hereof, or of the plans and specifications or any part or parts thereof which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to the materials used or to be used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner and his decision in writing shall be final and binding upon the parties except as next hereinafter provided.

In case after delivery of a completed vessel to the Owner under this Contract (but only in that event) the Contractor shall deem that it is aggrieved by any decision of said General Manager as to any disputed matter hereunder of any kind regarding such vessel, and shall give written notice to the Owner to that effect within thirty (30) days after delivery of such vessel to, or after final payment of such vessel by the Owner, such matter shall be determined by a Board which shall consist of three disinterested naval architects or engineers or experts to be appointed, one by the Owner, one by the Contractor, and the third by the two so appointed. Such Board shall within thirty (30) days after sub-

mission of such matter to it make its determination, and its finding (made by a majority of the Board) shall be conclusive on both parties. Provided, however, that if the Contractor fails to notify the Owner in writing of its intent subsequently to appeal any decision of said General Manager, adverse to it, within ten (10) days after written notice of such adverse decision, the decision of said General Manager shall become final and binding upon both parties without appeal to the Board herein provided for. The cost of any such arbitration shall be borne equally by the Owner and the Contractor.

XXI.

NOT ASSIGNABLE.

This contract shall not, nor shall any interest herein, be transferred by the Contractor to any other person or persons save with the consent of the Owner in writing.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Penn-

sylvania, and a copy to it at Elizabeth, New Jersey, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXIV.

CONTROL BY OWNER.

The Contractor shall in the performance of its agreements hereunder comply with and be bound by all directions, instructions, and decisions of the Owner, or its authorized representatives, and compliance by the Contractor with any such directions, instructions or decision shall be a justification and protection to the Contractor for any action so taken.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

XXVI.

PERMITS.

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, in so far as they apply to the work hereunder, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this Contract.

XXVII.

RATE OF WAGES.

The Contractor agrees that it will at all times pay the prevailing rate of wages, and that under no circumstances will it pay any wages in excess of the prevailing rate without first obtaining the written approval of the Owner. The question of what is the prevailing rate and other questions with regard thereto are subject to the definition and interpretation of the Owner. If it should become necessary during the period of this contract to increase the wages of any of the employees of the Contractor it shall be done only with the written consent of the Owner first obtained, in which event the cost of such increase will be borne by the Owner, provided that any increase in wages or other increased cost on account of wages made without the written ap-

proval of the Owner shall be borne by the Contractor; and provided further that nothing herein shall be construed to prevent the Contractor from assigning work in divisions or pieces at prices or rates considered reasonable according to its present practice. If Sundays, holidays or overtime work be resorted to, it shall be without additional cost to the Owner unless specifically ordered by the Owner.

XXVIII.

This contract is executed and delivered upon the understanding that, if desired by the Owner a provision satisfactory in form and terms to the Owner, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof.

XXIX.

The Contractor hereby grants to the Owner an option for a period of sixty (60) days from January 5, 1918, within which the Owner may elect to require the Contractor to build fourteen (14) tugs in addition to the six tugs the construction of which is hereinbefore provided for, or such number less than fourteen (14) as the Owner shall elect. In case the Owner shall exercise said option it shall give notice thereof to the Contractor by telegraph, confirmed by mail as hereinbefore provided, in which notice it shall specify the number of such additional tugs in respect of which it elects to exercise said option. In case such notice shall be

given, all the terms and provisions of this contract, in so far as applicable, shall apply to the construction of the additional tugs covered by such notice, except that the fixed fee for profit to the Contractor on account of the construction of such additional tugs shall be Thirty-five thousand dollars ($35,000), instead of Thirty thousand dollars ($30,000), and that the delivery of said additional tugs shall be as follows: The first two thereof in the month of March, 1919, and thereafter two tugs per month until all of said additional tugs shall have been completed and delivered.

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

(Corporate Seal)

Attest:
A. N. Roberts,
Asst. Secretary.

United States Shipping Board Emergency Fleet Corporation,

By Charles Piez,
Vice President.

(Corporate Seal)

Attest:
Lester Sisler,
Secretary.

Approved as to form
Date—2-4-18
W. H. W. Jr.
Legal Division

U. S. Shipping Board Building
1319 F Street NW.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
WASHINGTON

February 28, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
South Bethlehem, Pa.

Gentlemen:

This is to confirm telegram sent you on this date both at South Bethlehem, Pa. and Elizabethport, New Jersey, which reads as follows:

"The Emergency Fleet Corporation hereby exercises option contained in article twentynine of contract number one hundred eightyfour dated December thirtyfirst nineteen hundred seventeen covering construction six tugboats at Elizabethport New Jersey stop In accordance with above you are authorized to construct fourteen additional tugs at cost plus a fee of thirtyfive thousand dollars per tug with deliveries as specified in the above mentioned contract and under conditions similar to those contained therein except that for purposes of determining the final fee to be paid the contractor the estimated cost is to be considered as two

hundred ninety thousand dollars per tug instead of three hundred thousand dollars as in contract one hundred eightyfour".

This order, when accepted, will constitute your authority for the construction of the said fourteen additional tugs. These tugs to be constructed in accordance with the terms of your contract No. 184 with the Corporation, dated December 31, 1917, except as follows:

1. The price you are to be paid for these tugs is the actual cost plus a fee of $35,000 per tug, with a provision that a further fee may be earned in accordance with the terms of your present contract, except that for purposes of payment, the actual estimated cost is to be considered $290,000 instead of $300,000 per tug.

2. These tugs to be delivered two in the month of March 1919 and two each month thereafter until all have been completed and delivered.

The above changes from the terms of your present contract have been discussed with your Mr. Brown and it is understood that they are satisfactory to your Corporation.

It is requested that receipt of this letter be promptly acknowledged. In this connection it is noted that a copy of same also goes to you by registered mail at Elizabethport, New Jersey.

Very truly yours,
Charles Piez,
Vice President & General Manager.
March 5th, 1918.

Defendant's Answer
(Bethlehem Shipbuilding Corp., Ltd.)
Exhibit 10

U. S. Shipping Board
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Permit us to acknowledge the receipt of your letter of the 28th ultimo, confirming telegram sent this Company on that date to South Bethlehem, Pa. and to Elizabethport, New Jersey, exercising the option contained in Article 29 of contract Number 184 dated December 31st, 1917, covering the construction of Fourteen (14) additional tugs.

This Company hereby accepts the order for these tugs to be constructed in accordance with the above mentioned contract as modified by your letter of the 28th ultimo.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,

By .....
Vice President.

EXHIBIT 18

CONTRACT

Between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Vessels

at

SPARROW'S POINT, MARYLAND

Owner's Contract No. 312 S. C.
Owner's Hull Nos. 1972-4.
Contractor's Hull Nos. 4192-4.

Dated May 15th, 1918

CONTRACT made this fifteenth day of May, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain

real estate situated at Sparrow's Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) cargo vessels of about seven thousand four hundred (7400) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the owner must bear the acceptance and approval of the Owner, or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to

the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

III.

TIME OF DELIVERY OF VESSELS.

1. It is agreed by both parties that time is the essence of this contract. Unless prevented by causes of delay set forth in Paragraph 2 of this Article III the work under this contract shall be prosecuted at all times with the utmost vigor and dispatch and without interruption. The Contractor shall use every endeavor to deliver said vessels as follows:

The first vessel about the first of December, 1919, the second vessel about the fifteenth of December,

1919, and the third vessel about the thirtieth of December, 1919.

DELAY.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground, or materials purchased by the Contractor but not delivered, or by reason of other causes beyond the reasonable control of the Contractor, among which (but not exclusive of others) are strikes, fires, lightning, earthquake, floods, riots, insurrections of war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery to be furnished the Contractor for use hereunder, or by reason of instruction given by the Owner under Articles X and XXIV hereof, beyond the time herein stated, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof; provided, however, that no request for extension of the contract time shall be considered unless the Contractor, within thirty (30) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve its de-

cision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that the parties hereto shall not agree as to such extension, such extension shall be determined in accordance with Article XX hereof.

IV.

The materials and parts which shall be used in the construction of the vessel shall be of the quality and characteristics best adapted to the various purposes for which they may be used in so far as they conform to the specifications and requirements of the Shipping Bureau. The Contractor shall supply such assistance as may be required by the surveyors of the Shipping Bureau and/or the representatives of the Owner, in making any tests and inspections of such material and parts at said shipyard of the Contractor as may be considered necessary by such surveyors or representatives.

V.

WORKMANSHIP.

The workmanship of said vessels in detail and finish in all parts shall be first-class, and of the very best quality usual in American sea-going vessels of this class, and shall at all times be subject to the inspection of the inspectors of the Shipping Bureau and of those of the Owner as aforesaid, and the surveyors and inspectors may with the approval of the Owner or its duly authorized representative, direct the replacement of any unfit workmanship or materials.

VI.

INSPECTION—DISTRICT OFFICER.

The vessels shall be inspected during the progress of the work by the surveyors of the Shipping Bureau and the inspection certificate of the highest rating of said organization for seagoing vessel of this type must be obtained and furnished when and as each vessel is ready for delivery. Tonnage certificates in duplicate shall also be obtained from the Commissioner of Navigation and furnished at the time of delivery of the vessels to the Owner. All expenses of such inspection and certificate shall be considered as part of the actual cost of the vessel. In addition to the surveyors of the Shipping Bureau, the Owner will employ, at its own expense, one or more inspectors of recognized ability in their profession to supervise and assist in the construction of these vessels. They and their assistants, described herein as the Owner's inspectors, will represent the Owner and will be required to watch closely the construction. Such one of them, as shall from time to time be so designated by the Owner, will act as representative of the Owner, and be designated as the District Officer, and to him shall be referred all questions arising under this contract at said shipyard. His decision on all important questions shall be in writing, and when rendered under his general authority or after approval by the Owner shall be binding, subject in all cases to appeal as provided in Article XX hereof.

VII.

TRIALS.

Before final acceptance by the Owner of each vessel, the Owner may require a dock trial of not exceeding eight (8) hours, and/or a sea trial at maximum draft and specified speed, or at a lesser draft and corresponding operating speed, as determined by the Owner, at some point convenient to said shipyard of the Contractor of not exceeding four hours, which shall be to the satisfaction of the Owner. Should any vessel fail to meet such actual tests then the Contractor agrees to take such additional steps as the Owner may require in order to put such vessel in a condition where it will meet such tests. After the satisfactory completion of the trials, tank tests and all other work included in the plans, specifications and authorized changes, each vessel shall be delivered afloat to the represenative of the Owner at said shipyard, and shall thereupon be accepted, and the Owner shall take possession of the vessel and be responsible for the safety thereof. The Owner shall remove such accepted vessel from said shipyard within such time as will prevent encumbrance of the waterfront or interference with the work of the Contractor on other vessels.

VIII.

TERMINATION OF CONTRACT.

In case of failure or omission of the Contractor, at any stage of the work prior to completion, from any cause or causes within its control, which shall exclude causes of delay mentioned in Paragraph 2

of Article III hereof, to go forward with the work and/or make progress towards its completion satisfactory to the Owner, the Owner may, except as qualified in this Article, terminate this contract. In that event the Owner may immediately enter that part of said shipyard used for the construction of said vessels, and such additional part thereof as may be necessary, and take possession of it, and of the vessels, materials and equipment and shall assume all commitment properly chargeable to the work hereunder. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board, a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand and/or ordered or contracted for and applicable thereto, and a copy of such statement and inventory shall be furnished to the Contractor. Concurrently with the making of such statement and inventory, the Owner may proceed with the construction of the vessels either at said shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in such statements and inventory. In case the Owner shall thus terminate this contract the total amount to be paid hereunder, including all payment theretofore made, shall be the actual cost (computed in the manner defined in Article XVII hereof) of all work done under this contract up to the time of termination, plus such part of the fixed profit of the Contractor hereinafter provided for as the Owner may decide to have been justly earned; provided, however, that if with-

in thirty (30) days after written notice to the Contractor by the Owner of the latter's intent to terminate this contract, the Contractor can show to the satisfaction of the General Manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, as aforesaid, the Contractor shall be allowed such opportunity as the General Manager of the Owner may deem reasonable to complete the work.

INSOLVENCY OF CONTRACTOR.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may cancel this contract, and may and is hereby empowered forthwith to enter, take possession of, and complete the work, without giving notice thereof to the Contractor.

INSURANCE.

The Contractor agrees to procure, so far as procurable at reasonable cost, and thereafter maintain, such insurance, in such forms, on such property, to cover such contingencies, in such amounts, and for such periods as the Owner shall approve or require, and to make recommendations to the Owner regarding the various risks against which insurance should be carried. The policies shall provide that the loss, if any, shall be payable to the Owner for the use of the Owner and/or the Contractor, as their respective interests may appear. The Owner may dispense with insurance, in whole or in part. Should

any vessel be constructively or actually totally destroyed and/or a total loss, no additional vessel shall be built under this contract in order to replace it and to complete the vessels herein provided for, unless required by the Owner. The Owner shall pay, within sixty (60) days after such total loss or destruction, to the Contractor for its profit for work done on such vessel, up to the time of such total loss or destruction, such sum as the General Manager of the Owner may determine to be fair and just, subject to arbitration as provided for in Article XX. In the event of such actual or constructive loss the Owner shall pay for all materials on hand intended for such vessels and such materials as the Contractor may have ordered for such vessels, as well as all other items of cost incurred up to the time of such loss.

IX.

CASUALTY INSURANCE.

The Contractor agrees to insure to the satisfaction of the Owner, so far as insurance shall be procurable at reasonable cost, against the liability of the Contractor and/or the Owner, for injuries to or death of employees, workmen or the public or others in, on, or about the work covered by this contract.

PATENTS.

The Contractor shall to the best of its ability protect the Owner against claims for any infringements of patents or patent rights and for the use of any patented articles embodied or to be embodied in the vessels by suitable agreements satisfactory to the Owner as to the use of such patents or patent

rights. The Owner will assume all costs, expenses, and damages which it or the Contractor may be obliged to pay to procure such agreements, or to pay by reason of any infringement of patents or patent rights or the use of patented articles not covered by such agreements, pursuant to a decree by a proper court in any litigation involving the use of such patents, but the Contractor shall assist the Owner at the latter's expense, save for services of the Contractor's employees, in furnishing such evidence as to the use of the patents and other matters of fact as may be required by the Owner in such litigation. The Contractor shall promptly notify the Owner in writing of any claims of infringements that may from time to time be brought to the Contractor's attention.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XI.

PROTECTION OF PROPERTY.

The Contractor shall provide the usual protection for the property of the Owner and of the Contrac-

tor at said shipyard and shall furnish such additional protection as the Owner may require. Such additional protection, however, shall be paid for by the Owner,

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence, and such powers as it may have by law, to assist the Contractor to secure, with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its rights to direct the re-

placement of unsatisfactory workmanship and/or materials.

INSPECTOR'S CERTIFICATES.

No inspector's certificate given or payment made under the terms of this contract (except on final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be a waiver of the right of the Owner to direct the replacement of unsatisfactory workmanship and/or materials.

XIV.

LIENS AND TAXES.

The Contractor will keep the vessels in the course of construction free and clear from all claims, liens or encumbrances of any kind or description (except liens or encumbrances accruing through the default of the Owner, and/or for which the Owner shall be responsible and except claims and liens of the Contractor), and shall, before delivery of each vessel, show to the satisfaction of the Owner that such vessel is free and clear from all claims, liens, and encumbrances except as aforesaid. The Contractor agrees that it will, to the extent that funds are available under the terms of Article XV, promptly pay for all labor, material or other service rendered to it in connection with the work under this contract.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for

shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XVIII.

SALVAGE OF SCRAP.

All materials and supplies purchased for but not used in the construction of the vessels herein contracted for shall be and remain the property of the Owner and the value thereof shall be credited on the cost of the vessels. The salvage, value of scrap, waste containers, etc., originally purchased for the vessels and disposed of during the life of this contract shall be credited to the cost of the vessels.

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States, Norfolk, Virginia, of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased, by the direction of or with the approval of the Owner, from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period

of the construction of the vessels. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessels in the execution of the work reach or exceed the sum of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000) or such revised estimate cost in lieu thereof in any case shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One Hundred and Twenty-five Thousand Dollars ($125,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed, as profit on each vessel in addition to said fixed sum for profit of One Hundred and Twenty-five Thousand Dollars ($125,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of One Hundred and Twenty-five Thousand Dollars ($125,000) shall be paid as follows:

PROFITS WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be re-

quired until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sum of One Hundred and Twenty-five Thousand Dollars ($125,000), determined as hereinbefore provided, shall become immediately due and payable.

XX.

DISPUTES.

In case the parties fail to agree as to any matter contained in, or connected with this contract, or if any doubt or dispute arises as to the meaning, constructions or effect of this contract, or of any of the provisions or covenants hereof, or of the plans and specifications of any part or parts hereof, which are part hereof, or as to the manner of doing the work provided for hereunder, or as to the materials used or to be used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner and his decision in writing shall be final and binding upon the parties, except as next hereinafter provided. In case after delivery of a completed vessel to the Owner under this contract (but only in that event) the Contractor shall deem that it is aggrieved by any decision of said General

Manager as to any disputed matter hereunder of any kind regarding such vessel, and shall give written notice to the Owner to that effect within thirty (30) days after delivery of such vessel to, or after final payment of such vessel by, the Owner, such matter shall be determined by a Board which shall consist of three disinterested naval architects or engineers or experts to be appointed, one by the Owner, one by the Contractor, and a third by the two so appointed. Such Board shall within thirty (30) days after submission of such matter to it, make its determination, and its finding (made by the majority of the Board) shall be conclusive on both parties. Provided, however, that if the Contractor fails to notify the Owner in writing of its intent subsequently to appeal any decision of said General Manager adverse to it within ten (10) days after written notice of such adverse decision, the decision of said General Manager shall become final and binding upon both parties without appeal to the Board herein provided for. The cost of any such arbitration shall be borne equally by the Owner and the Contractor.

XXI.

CONTRACT NOT ASSIGNABLE.

This contract shall not, nor shall any interest therein, be transferred by the Contractor to any other person or persons save with the consent of the Owner in writing.

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram

(confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Sparrow's Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXIV.

CONTROL BY OWNER.

The Contractor shall in the performance of its agreements hereunder, comply with and be bound by all directions, instructions, and decisions of the Owner, or its authorized representatives, and compliance by the Contractor with any such directions, instructions or decision, shall be a justification and protection to the Contractor for any action so taken.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

XXVI.

PERMITS.

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of work, plants and vessels in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States insofar as they apply to the work hereunder, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

XXVII.

RATE OF WAGES.

The Contractor agrees that it will at all times pay the prevailing rate of wages, and that under no circumstances will it pay any wages in excess of the prevailing rate without first obtaining the writ-

ten approval of the Owner. The question of what is the prevailing rate and other questions with regard thereto are subject to the definition and interpretation of the Owner. If it should become necessary during the period of this contract to increase the wages of any of the employees of the Contractor, it should be done only with the written consent of the Owner first obtained, in which event the cost of such increase will be borne by the Owner, provided that any increase in wages or other increased cost on account of wages made without the written approval of the Owner shall be borne by the Contractor, and provided further that nothing herein shall be construed to prevent the Contractor from assigning work in divisions or pieces at prices or rates considered reasonable according to its present practice. If Sundays, holidays or overtime work be resorted to it shall be without additional cost to the Owner, unless specifically ordered by the Owner.

XXVIII.

This contract is executed and delivered upon the understanding that, if desired by the Owner, a provision satisfactory in form and terms to the Owner, restricting the hours of labor or laborers and mechanics employed by the Contractor or by sub-contractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract with the same force and effects as if inserted in the contract before the execution and delivery thereof.

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be af-

fixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

H. E. LEWIS
Vice-President.

(Corporate Seal)

Attest:

A. N. Roberts,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
Howard Coonley
Vice-President.

(Corporate Seal)

Attest:

C. Bradford Fraley
Asst. Secretary.

Approved as to form:

Date—6/15/18.
William H. White, Jr.,
Legal Division.

Approved,

T. Ed. Skeel,
Asst. Comptroller.

Approved:

Daniel H. Cox,
Manager Division of
Steel Ship Construction.

THE ANSWER AND COUNTERCLAIM OF THE DEFENDANT BETHLEHEM STEEL COMPANY TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Bethlehem Steel Company (hereinafter called the defendant), for its separate answer and counterclaim to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant Fore River Shipbuilding Corporation, Fore River; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. Except as so specifically ad-

mitted, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship, Fore River, Union and the defendant dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Ex-

cept as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant, Union, Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, Penn Mary Steel Company, a Pennsylvania corporation, and a subsidiary of the defendant, owned, among other things, a shipbuilding plant at Sparrows Point, Maryland. Such plant was acquired by Penn Mary Steel Company from Maryland Steel Company, a Maryland corporation, on or about July 1, 1916 (retroactive to March 1, 1916), and immediately thereafter Penn Mary Steel Company leased such plant, together with certain other properties, to the defendant which thereafter and until on or about November 1, 1917, operated such plant. Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and its liabilities assumed by Penn Mary Steel Company as of July 1, 1916.

Prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, and until the acquisition thereof by Bethlehem Ship, Fore River owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by Bethlehem Ship.

On or about January 17, 1905, Union acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation. Prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, and until the operation thereof was taken over by Bethlehem Ship, Union operated a shipbuilding plant known as the Union plant at or near San Francisco, California.

Except as so specifically admitted, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon it an order purporting to requisition on behalf of the United States all power driven, cargo carrying and passenger vessels, above 2500 tons deadweight capacity, under construction in its yard, together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into a contract with it covering the completion of such vessels as hereinafter in Article

Fifty-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons deadweight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it admits that on or about October 29, 1917, Bethlehem Ship acquired from Penn Mary Steel Company the shipbuilding plant then operated by the defendant at Sparrows Point, Maryland, and that since such acquisition Bethlehem Ship has continuously operated such plant. It denies that it has any knowledge with respect to each and every averment of said Article Eighteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Eighteenth.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, Bethlehem Ship entered into an agreement with it whereby Bethlehem Ship undertook to perform all of its outstanding contracts with the Fleet Corporation for the construction of vessels covered by such requisition order of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Nineteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, it knew what the cost of building the various types of steel vessels which had prior thereto been built by it had been, and it admits that at such time Bethlehem Ship maintained at the Sparrows Point plant an organization engaged in the building of vessels. It admits that at the same time the defendant Bethlehem Steel Corporation owned its capital stock and that by reason thereof such defendant became entitled to dividends as and when declared from its net earnings. It denies that it has

any knowledge with respect to each and every averment of said Article Twentieth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Harlan, Moore, Fore River and Union and of the Sparrows Point plant acquired as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making of the contracts between the Fleet Corporation and Bethlehem Ship dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant Union and by Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said

Article Twenty-first that neither the complainant, nor the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the

least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was obligated to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted, it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof.

Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem Steel Corporation, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts referred to in the bill of complaint and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to such contracts, and refrained from questioning the provisions of some of such contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It denies that it has any knowledge with respect to the averments of said Article Twenty-sixth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during

the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation owned the capital stock of Bethlehem Ship, Fore River, Union and the defendant, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth; Answering Article Twenty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

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Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon it of the requisition order of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered it to complete the vessels covered by such requisition order substantially in accordance with the plans and specifications provided

by the original contracts for such vessels between it and the former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such order dated August 22, 1917, was accepted by it on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Fifty-fifth and Fifty-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels under construction at its plant and included in such requisition order of August 3, 1917, and, to the extent that such figures are the same as those shown on Exhibit 1 hereto, the total amounts paid by the former owners and the Fleet Corporation to it and Bethlehem Ship on account of the construction of such vessels, but it refers to Exhibit 1 hereto (being Exhibit 3 to the Answer of Bethlehem Ship on file in this action) and to the averments of Articles Fifty-fourth to Sixty-fifth, inclusive, hereof, for a correct statement of the transactions and accounts between the Fleet Corporation and it and Bethlehem Ship on account of the construction of such vessels. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that its original contracts under which the vessels listed in Exhibit 1 hereto opposite its name were being constructed by it for the former owners thereof (except two) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that it was not entitled under such contracts to additional compensation for overtime work on such construction. It denies that it has any knowledge with respect to each and every averment of said Article Forty-second as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent.

(100%): Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by it and before the completion of such vessels was undertaken by Bethlehem Ship, a contract was entered into between it and the Fleet Corporation for the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, it entered into an agreement with Bethlehem Ship, as hereinafter in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fourth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition order it and Bethlehem Ship employed overtime in the construction thereof. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fifth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the "overtime co-efficient" which was adopted and applied to overtime at its plant and which the Fleet Corporation agreed to pay as hereinafter in Article Fifty-seventh hereof set forth, was arrived at as follows (the computations for convenience being reduced to units of a dollar):

"TIME AND A HALF."

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of	

item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours overtime	$2.625

It denies that it has any knowledge with respect to each and every averment of said Article Forty-sixth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time Bethlehem Ship included in its statements to the Fleet Corporation on account of the "overtime co-efficient" the amounts specified in column K of Exhibit 1 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof as applied to the other defendants herein, and as applied to it, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it, and by way of explanation of the transactions in which it is in any way involved, as set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: On or about the dates, respectively, listed in column C of Exhibit 1 hereto, the defendant and the former owners, respectively, listed in column B thereof, made and entered into written contracts covering the construction of the vessels included in such requisition order in Article Fifteenth hereof mentioned and listed in column D of such Exhibit 1 opposite its name in column A thereof. Such Exhibit 1 is the same as Exhibit 3 annexed to the Answer of Bethlehem Ship on file in this action. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein

referred to, marked Exhibits 50 to 56, inclusive, respectively, are annexed to such Answer of Bethlehem Ship and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Fifty-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about October 10, 1917, the defendant and the Fleet Corporation, acting as principal and not as the agent of the complainant, entered into a contract in writing whereby the defendant agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein referred to in so far as the original contracts describe such vessels, the materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions for the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all its right, title and interest in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the defendant for the work of such completion, amounts equal to the payments set forth in the original contracts and not

then paid. The Fleet Corporation also agreed that upon the completion of such vessels a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contract in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation solely on such basis.

Fifty-sixth: Thereafter, and on or about October 29, 1917, Bethlehem Ship acquired the shipbuilding plant operated by the defendant and, at the same time, made and entered into an agreement with the defendant whereby Bethlehem Ship became obligated as the defendant's agent to perform all of the defendant's contracts listed in such Exhibit 1, and became entitled to the benefits theretofore accrued and, thereafter to accrue under such contracts; and Bethlehem Ship, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contract between the defendant and the Fleet Corporation in Article Fifty-fifth hereof set forth.

Fifty-seventh: Thereafter, from time to time, the Fleet Corporation directed Bethlehem Ship to employ overtime in the construction of Hulls numbered 169, 170, and 172-175, inclusive, and on or about the 11th day of January, 1918, agreed that it would

pay to Bethlehem Ship in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 2.625 (called the "overtime co-efficient") times the bonus (i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by Bethlehem Ship to its employees in respect of such overtime. Bethlehem Ship in accordance with such agreement and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficient amounted to the sums set forth in column K of such Exhibit 1 hereto.

Fifty-eighth: Thereafter, and on or about June 17, 1918, Bethlehem Ship and the Fleet Corporation entered into an agreement, whereby the Fleet Corporation agreed to reimburse Bethlehem Ship, on the terms and conditions therein set forth, for certain payments which, to expedite the completion of Hulls numbered 169-170 and 172-175, inclusive, Bethlehem Ship proposed to make to its foremen, assistant foremen, leading men and other heads of departments. The amounts which were so paid by Bethlehem Ship and which the Fleet Corporation agreed to reimburse to Bethlehem Ship as aforesaid, are as set forth in column L of such Exhibit 1.

Fifty-ninth: From time to time during the period of construction of Hulls numbered 167, 169, 170 and 172-175, inclusive, the former owners, and later, the Fleet Corporation, under and pursuant to the terms

of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of such contracts it was agreed should be added to the price of each such vessel was as set forth in column J of such Exhibit 1.

Sixtieth: From time to time during the period of construction of Hulls numbered 169-170 and 174-175, inclusive, the rates of wages paid by the defendant and, later by Bethlehem Ship in the construction of such vessels exceeded by more than ten per cent. (10%) the rates of wages which were paid by the defendant at the date of the original contracts therefor. Sixty cents ($.60) per deadweight ton for each one per cent, (1%) so paid in excess of ten per cent. (10%) over the rates of wages at the date of such contracts, respectively, paid by the defendant amounted to the sums specified in column M of such Exhibit 1.

Sixty-first: In the case of Hulls numbered 169-170, 173 and 174-175, inclusive, the original contracts therefor provided that the purchaser would pay to the shipbuilder for each ton that the deadweight carrying capacity of each such vessel should exceed the guaranteed deadweight carrying capacity thereof, respectively, the amounts specified in such contracts. Upon the completion of such vessels they, respectively, had the deadweight carrying capacity

specified in column F of such Exhibit 1 and there became due from the Fleet Corporation on account thereof the amounts specified in column N of such Exhibit 1.

Sixty-second: Bethlehem Ship completed such vessels so included in such requisition order and listed in column D of such Exhibit 1 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the Sparrows Point plant on or about the dates listed in such Exhibit 1, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant and Bethlehem Ship duly performed all the terms and conditions of all the contracts therefor on their part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Sixty-third: After the completion and delivery of the vessels and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the defendant and/or Bethlehem Ship on account of the construction of such vessels to be as set forth in column I, J, K, L, M, N, O, P and Q of such Exhibit 1.

Sixty-fourth: From time to time during and after the period of construction thereof, the former

owners, and, later, the Fleet Corporation, paid to the defendant and, later, to Bethlehem Ship, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 1.

Sixty-fifth: Although duly requested, the Fleet Corporation has failed and refused to pay on account of the construction of such vessels, the amounts set forth in column S of such Exhibit 1 and such amounts together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to Bethlehem Ship.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, but in addition thereto, says:

Sixty-sixth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, how-

ever, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Sixty-seventh: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special refer-

ence to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Sixty-eighth: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

"Resolved that all contracts of the United States Shipping Board Emergency Fleet Cor-

poration, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Sixty-ninth: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and the defendants herein.

Insufficiency of Bill of Complaint

Seventieth: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Claim for Credit

Seventy-first: Not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, the defendant repeats and reavers each and

every averment of Articles Fifty-fourth to Sixty-fifth, inclusive, hereof with the same force and effect as if herein again alleged in full and says that Bethlehem Ship has duly presented to the Fleet Corporation and to the United States Shipping Board all of the defendant's and/or Bethlehem Ship's claims on account of the transactions in said Articles set forth and the Fleet Corporation and said Shipping Board have disallowed such claims, and that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth, should be reduced by the amounts now due and owing from the Fleet Corporation hereinbefore set forth, so that the complainant should recover nothing.

Counterclaim

Seventy-second: Not waiving but insisting on the defenses pleaded in the foregoing Answer, but in addition thereto, the defendant repeats and reavers the averments in Articles Fifty-fourth to Sixty-fifth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name, the defendant should recover of the complainant the sum of Eight hundred fifty-two thousand four hundred one dollars and thirty-five cents ($852,401.35), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with the costs of this action.

2. That if the above prayer be not granted, then that the defendant recover of the complainant the sum of Eight hundred fifty-two thousand four hundred one dollars and thirty-five cents ($852,401.35), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

3. That the defendant have such other and further relief as may be just and equitable.

CHARLES SINKLER,
Solicitor for the Defendant
Bethlehem Steel Company

CRAVATH, HENDERSON & DE GERSDORFF,
of Counsel.

July 25, 1925.

THE ANSWER OF THE DEFENDANT FORE RIVER SHIPBUILDING CORPORATION TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Fore River Shipbuilding Corporation (hereinafter called the defendant), for its separate answer to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. It denies that it has any knowledge with respect to the averments of said Article Second that the defendant Bethlehem Steel Company is jointly liable with Bethle-

hem Ship with respect to certain of the causes of action averred in the bill of complaint, and particularly with respect to part of the causes of action averred in Articles Forty-second to Fifty-second, inclusive, of such bill. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship, Union, the defendant Bethlehem Steel Company and the defendant dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between

Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey or on about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant Bethlehem Steel Company, Union, Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, and until the acquisition thereof by Bethlehem Ship, the defendant owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by Bethlehem Ship. The defendant denies that it has any knowledge with respect to the averments of said Article Fourteenth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon it an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons dead-weight capacity, under construction in its yard, together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into a contract with it covering the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons dead-weight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, it leased its plant to Bethlehem Ship and that from the effective date of such lease Bethlehem Ship has operated such plant. It admits that on or about the same date Bethlehem Ship entered into an agreement with it whereby Bethlehem Ship undertook to perform all of its outstanding contracts with the Fleet Corporation for the construction of vessels covered by such requisition order of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Nineteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the

making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, it knew what the cost of building the various types of steel vessels which had prior thereto been built by it had been, and it admits that at such time Bethlehem Ship maintained at the Fore River plant an organization engaged in the building of vessels. It admits that the defendant Bethlehem Steel Corporation has since about May 2, 1918, owned its capital stock, and that by reason thereof such defendant has been since such time entitled to dividends as and when declared from its net earnings. It denies that it has any knowledge with respect to each and every averment of said Article Twentieth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Harlan, Moore, Union and the defendant and of the Sparrows Point plant acquired as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making of the contracts between the Fleet Corporation and Bethlehem Ship dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the

Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant Union and by Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said Article Twenty-first that neither the complainant, nor the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was obligated to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted, it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any

knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem Steel Corporation, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts referred to in the bill of complaint and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to such contracts, and refrained from questioning the provisions of some of such

contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It denies that it has any knowledge with respect to the averments of said Article Twenty-sixth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation owned the capital stock of the defendant Bethlehem Steel Company, Bethlehem Ship, Union and the defendant, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies that it has any

knowledge with respect to each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon it of the requisition order of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered it to complete the vessels covered by such requisition order substantially in accordance with the plans and specifications provided by the original contracts for such vessels between it and the former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such order dated August 22, 1917, was accepted by it on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Fifty-fifth and Fifty-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels under construction at its plant and included in such requisition order of August 3, 1917, and, to the extent

that such figures are the same as those shown on Exhibit 1 hereto, the total amounts paid by the former owners and the Fleet Corporation to it and Bethlehem Ship on account of the construction of such vessels, but it refers to Exhibit 1 hereto (being Exhibit 3 to the Answer of Bethlehem Ship on file in this action) and to the averments of Articles Fifty-fourth to Sixty-seventh, inclusive, hereof, for a correct statement of the transactions and accounts between the Fleet Corporation and it and Bethlehem Ship on account of the construction of such vessels. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that its original contracts under which the vessels listed in Exhibit 1 hereto opposite its name were being constructed for the former owners thereof (except two) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that it was not entitled under such contracts to additional compensation for overtime work on such construction. It denies that it has any knowledge with respect to the averments of said Article Forty-second as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war ship-

building program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by it and before the completion of such vessels was undertaken by Bethlehem Ship, a contract was entered into between it and the Fleet Corporation for the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, it entered into an agreement with Bethlehem Ship, as hereinafter in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fourth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has

denied that it has any knowledge, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition order it and Bethlehem Ship employed overtime in the construction thereof. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fifth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the "overtime co-efficient" which was adopted and applied to overtime at its plant and which the Fleet Corporation agreed to pay as hereinafter in Article Fifty-eighth hereof set forth, was arrived at as follows (the computations for convenience being reduced to units of a dollar):

"TIME AND A HALF."

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by	

Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours overtime	$2.625

It denies that it has any knowledge with respect to the averments of said Article Forty-sixth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time Bethlehem Ship included in its statements to the Fleet Corporation on account of the "overtime co-efficient" the amounts specified in column K of Exhibit 1 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof as applied to the other defendants herein, and as applied to it; it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it, and by way of explanation of the transactions in which it is in any way involved, as set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: On or about the dates, respectively, listed in column C of Exhibit 1 hereto, the defendant and the former owners, respectively, listed in column B thereof, made and entered into written contracts covering the construction of the vessels included in such requisition order in Article Fifteenth hereof mentioned and listed in column D of such Exhibit 1 opposite its name in column A thereof. Such Exhibit 1 is the same as Exhibit 3 annexed to the Answer of Bethlehem Ship on file in this action. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein referred to, marked Exhibits 29 to 37, inclusive, respectively, are annexed to such Answer of Bethlehem Ship and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Fifty-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about September 10, 1917, the defendant and the Fleet Corporation, acting as principal and not as the agent of the complainant, entered into a contract in writing whereby the defendant agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein

referred to in so far as the original contracts describe such vessels, the materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions for the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all its right, title and interest in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the defendant for the work of such completion, amounts equal to the payments set forth in the original contracts and not then paid. The Fleet Corporation also agreed that upon the completion of such vessels a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contract in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation solely on such basis.

Fifty-sixth: Thereafter, and on or about November 1, 1917, Bethlehem Ship leased the defendant's

plant and, at the same time, made and entered into an agreement with the defendant whereby Bethlehem Ship became obligated as the defendant's agent to perform all of the defendant's contracts listed in such Exhibit 1, and became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts; and Bethlehem Ship, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contract between the defendant and the Fleet Corporation in Article Fifty-fifth hereof set forth.

Fifty-seventh: Thereafter, and on or about the 28th day of January, 1919, in consideration of an agreement on the part of the Fleet Corporation to pay to Bethlehem Ship for the work of constructing Hulls numbered 264, 265 and 267, the cost thereof plus $10 per ton deadweight capacity of said vessels, Bethlehem Ship agreed to reduce the percentage of cost which the Fleet Corporation should pay to it for profit for constructing Hulls numbered 297 and 298, from twenty-five per cent. (25%) to fifteen per cent. (15%).

Fifty-eighth: Thereafter, from time to time, the Fleet Corporation directed Bethlehem Ship to employ overtime in the construction of Hulls numbered 268, 269, 272 and 273, and on or about the 11th day of January, 1918, agreed that it would pay to Bethlehem Ship in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 2.625 (called the "overtime co-efficient") times the bonus

(i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by Bethlehem Ship to its employees in respect of such overtime. Bethlehem Ship in accordance with such agreement and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficient amounted to the sums set forth in column K of such Exhibit 1 hereto.

Fifty-ninth: From time to time during the period of construction of Hulls numbered 268, 269, 272 and 273, the former owners, and later, the Fleet Corporation, under and pursuant to the terms of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of such contracts it was agreed should be added to the price of each such vessel was as set forth in column J of such Exhibit 1.

Sixtieth: In the case of Hulls numbered 272 and 273, the original contracts therefor provided that the purchaser would pay to the shipbuilder for each ton that the deadweight carrying capacity of each such vessel should exceed the guaranteed deadweight carrying capacity thereof, respectively, the amounts

specified in such contracts. Upon the completion of such vessels they, respectively, had the deadweight carrying capacity specified in column F of such Exhibit 1 and there became due from the Fleet Corporation on account thereof the amounts specified in Column N of such Exhibit 1.

Sixty-first: In the months of November and December, 1917, the Fleet Corporation directed Bethlehem Ship to put into effect in its East Coast plants, including the Fore River plant, on all requisitioned vessels, the rates of wages then prevailing at the Navy Yard nearest thereto. On April 6, 1918, and again on October 24, 1918, the Shipbuilding Labor Adjustment Board increased the rates of wages payable to labor engaged in ship construction at the Fore River plant and the Fleet Corporation ordered and directed Bethlehem Ship to put into effect such increased rates and agreed to reimburse Bethlehem Ship for the increased cost of labor incurred on account thereof. The increased cost of labor actually incurred by Bethlehem Ship in the construction of Hulls numbered 268, 269, 272 and 273, pursuant to the aforementioned orders and directions of the Fleet Corporation and for which the Fleet Corporation agreed to reimburse Bethlehem Ship as aforesaid was as set forth in column M of such Exhibit 1.

Sixty-second: Bethlehem Ship completed such vessels so included in such requisition order and listed in column D of such Exhibit 1 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the Fore

River plant on or about the dates listed in such Exhibit 1, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant and Bethlehem Ship duly performed all the terms and conditions of all the contracts therefor on their part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Sixty-third: In addition to the materials which entered into the construction of Hulls numbered 297 and 298 the cost of which was paid directly by the defendant and Bethlehem Ship, there were other materials which entered into the construction of such vessels which were obtained for the defendant and Bethlehem Ship by Luckenbach, the former owner, from other contractors, the cost of which aggregating Two hundred thirty-three thousand six hundred dollars ($233,600) was paid by said Luckenbach direct to such contractors, so that the total actual cost of constructing Hulls numbered 297 and 298 determined in accordance with the provisions of the contracts therefor, was Five million two hundred twenty-five thousand three hundred thirty-nine dollars and thirty-one cents ($5,225,339.31).

Sixty-fourth: Upon the completion and delivery of Hulls numbered 297 and 298, Bethlehem Ship purchased from the Fleet Corporation certain surplus materials left over from the materials used in constructing such vessels for the sum of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), and Bethlehem Ship agreed

that, for the purpose of determining the profit payable in respect of the construction of such vessels, there should be deducted from the total cost of constructing the same such sums of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), thus reducing such total actual cost for such purpose to the sum of Five million one hundred ninety-three thousand one hundred forty-two dollars and eighty-nine cents ($5,193,142.89).

Sixty-fifth: After the completion and delivery of the vessels and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the defendant and/or Bethlehem Ship on account of the construction of such vessels to be as set forth in columns I, J, K, L, M, N, O, P and Q of such Exhibit 1.

Sixty-sixth: From time to time during and after the period of construction thereof, the former owners, and, later, the Fleet Corporation, paid to the defendant and, later, to Bethlehem Ship, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 1.

Sixty-seventh: Although duly requested, the Fleet Corporation has failed and refused to pay on account of the construction of such vessels, the amounts set forth in column S of such Exhibit 1, and such amounts together with interest thereon

from September 1, 1922, are now due and owing from the Fleet Corporation to Bethlehem Ship.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, but in addition thereto, says:

Sixty-eighth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, however, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Sixty-ninth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Seventieth: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

> "Resolved that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Seventy-first: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and the defendants herein.

Insufficiency of Bill of Complaint

Seventy-second: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Claim for Credit

Seventy-third: Not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, the defendant repeats and reavers each and every averment of Articles Fifty-fourth to Sixty-seventh, inclusive, hereof with the same force and effect as if herein again alleged in full and says that Bethlehem Ship has duly presented to the Fleet Corporation and to the United States Shipping Board all of the defendant's and/or Bethlehem Ship's claims on account of the transactions in said Articles set forth and the Fleet Corporation and

said Shipping Board have disallowed such claims, and that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth, should be reduced by the amounts now due and owing from the Fleet Corporation hereinbefore set forth.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with costs of this action.

2. That the defendant have such other and further relief as may be just and equitable.

Charles Sinkler,
Solicitor for the Defendant Fore River Shipbuilding Corporation.

Cravath, Henderson and De Gersdorff,
Of Counsel.

July 25, 1925.

THE ANSWER AND COUNTERCLAIM OF THE DEFENDANT UNION IRON WORKS COMPANY TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Union Iron Works Company (hereinafter called the defendant), for its separate answer and counterclaim to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant, Fore River Shipbuilding Corporation, Fore River; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. It denies that it has any knowledge with respect to the averments

of said Article Second that the defendant Bethlehem Steel Company is jointly liable with Bethlehem Ship with respect to certain of the causes of action averred in the bill of complaint, and particularly with respect to part of the causes of action averred in Articles Forty-second to Fifty-second, inclusive, of such bill. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship, Fore River, the defendant Bethlehem Steel Company and the de-

fendant dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant Bethlehem Steel Company, Harlan, Moore and the defendant and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that on or about January 17, 1905, it acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation, and that prior to the transactions between Bethlehem Ship and the Fleet Corporation

thereafter referred to in the bill of complaint, and until the operation thereof was taken over by Bethlehem Ship, it operated a shipbuilding plant known as the Union plant at or near San Francisco, California. It denies that it has any knowledge with respect to the averments of said Article Fourteenth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon it an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons deadweight capacity, under construction in its yard, together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into a contract with it covering the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons deadweight capacity then under construction in all shipyards throughout the United States. Except as so speci-

fically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, it leased its plant to Bethlehem Ship and that from the effective date of such lease Bethlehem Ship has operated such plant. It admits that on or about the same date Bethlehem Ship entered into an agreement with it whereby Bethlehem Ship undertook to perform all of its outstanding contracts with the Fleet Corporation for the construction of vessels covered by such requisition order of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Fifty-sixth hereof set forth. It denies that

it has any knowledge with respect to each and every averment of said Article Nineteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, it knew what the cost of building the various types of steel vessels which had prior thereto been built by it had been, and it admits that at such time Bethlehem Ship maintained at its plant an organization engaged in the building of vessels. It admits that at the same time the defendant Bethlehem Steel Corporation owned its capital stock and that by reason thereof became entitled to dividends as and when declared from its net earnings. It denies that it has any knowledge with respect to each and every averment of said Article Twentieth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Fore River, Moore, Harlan and the defendant and of the Sparrows Point plant acquired

as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making of the contracts between the Fleet Corporation and Bethlehem Ship dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant and by Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said Article Twenty-first that neither the complainant, nor the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for

the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was obligated to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted, it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem

Steel Corporation, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts referred to in the bill of complaint and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to such contracts, and refrained from questioning the provisions of some of such contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It denies that it has any knowledge with respect to the averments of said Article Twenty-sixth as applied to the other defenda .. herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation owned the capital stock of Bethlehem Steel Company, Bethlehem Ship, Fore River and the defendant, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it denies that it has any

knowledge with respect to each and every averment ther of.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it denies that it has any

knowledge with respect to each and every averment thereof.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon it of the requisition order of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered it to complete the vessels covered by such requisition order substantially in accordance with the plans and specifications provided by the original contracts for such vessels between it and the former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such order dated August 22, 1917, was accepted by it on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Fifty-fifth and Fifty-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels under construction at its plant, and included in such requisition order of August 3, 1917, and, to the extent that such figures are the same as those shown on Exhibit 1 hereto, the total amounts paid by the former owners and the Fleet Corporation to it and Bethlehem Ship on account of the construction of such vessels, but it refers to Exhibit 1 hereto (being Exhibit 3 to the Answer of Bethlehem Ship on file in this action) and to the averments of Articles Fifty-fourth to Sixty-fourth, inclusive, hereof, for a correct statement of the transactions and accounts between the Fleet Corporation and it and Bethlehem Ship on account of the construction of such vessels. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that its original contracts under which the vessels listed in Exhibit 1 hereto opposite its name were being constructed for the former owners thereof (except two) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that it was not entitled under such contracts to additional compensation for overtime work on such construction. It denies that it has any knowledge with respect to each and every averment of said Article Forty-second as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any

knowledge, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by it and before the completion of such vessels was undertaken by Bethlehem Ship, a contract was entered into between it and the Fleet Corporation for the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, it entered into an agreement with Bethlehem Ship, as

hereinafter in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fourth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition order it and Bethlehem Ship employed overtime in the construction thereof. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fifth as applied to the other defendants herein. Except as aforesaid, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the various "overtime co-efficients" which were adopted and applied to overtime at its plant and which the Fleet Corporation agreed to pay as hereinafter in Article Fifty-eighth hereof set forth, were arrived at as follows (the computations for convenience being reduced to units of a dollar):

"TIME AND A HALF:"

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour $2.00
(The shipbuilder is not reimbursed payments under (a) except to the extent

that they are covered by lump sum prices.)

(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation 1.00

Total paid by shipbuilder to workmen for overtime and bonus $3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2.625, the following:

(1) Overtime bonus, as above $1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours ..... .75

Total of factors (1) and (2) $1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above ..... .875

Total charged by shipbuilder to the Fleet Corporation for each two hours overtime $2.625

"DOUBLE TIME."

Shipbuilder pays workmen for overtime of one hour:

(a) At rate of $1 per hour $1.00
(b) Bonus paid double time per hour 1.00

Total paid by shipbuilder to workmen

for overtime and bonus $2.00

Shipbuilder receives under co-efficient of 1.8125, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ per hour	.375
(3) *Increased overhead 50%. (½ hour plus ⅜ of an hour)	.4375
Total	$1.8125

"Double Time on Sundays and Holidays."

Shipbuilder pays for each one hour overtime bonus of	$1.00
No loss in efficiency.	
*Increased overhead 50% of one-half hour	.25
	$1.25

Except as so specifically admitted, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to

*The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

time Bethlehem Ship included in its statements to the Fleet Corporation on account of the "overtime co-efficient" the amounts specified in column K of Exhibit 1 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof as applied to the other defendants herein, and as applied to it, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it, and by way of explanation of the transactions in which it is in any way involved, as set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: On or about the dates, respectively, listed in column C of Exhibit 1 hereto, the defendant and the former owners, respectively, listed in column B thereof, made and entered into written contracts covering the construction of the vessels included in such requisition order in Article Fifteenth hereof mentioned and listed in column D of such Exhibit 1 opposite its name in column A thereof. Such Exhibit 1 is the same as Exhibit 3 annexed to the Answer of Bethlehem Ship on file in this action. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein referred to, marked Exhibits 57 to 72, inclusive, respectively, are annexed to such Answer of Bethlehem Ship and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Fifty-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about September 20, 1917, the defendant and the Fleet Corporation, acting as principal and not as the agent of the complainant, entered into a contract in writing whereby the defendant agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein referred to in so far as the original contracts de-

scribe such vessels, the materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions for the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all its right, title and interest in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the defendant for the work of such completion, amounts equal to the payments set forth in the original contracts and not then paid. The Fleet Corporation also agreed that upon the completion of such vessels a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contract in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation solely on such basis.

Fifty-sixth: Thereafter, and on or about November 1, 1917, Bethlehem Ship leased the defendant's plant and, at the same time, made and entered into

an agreement with the defendant whereby Bethlehem Ship became obligated as the defendant's agent to perform all of the defendant's contracts listed in such Exhibit 1, and became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts; and Bethlehem Ship, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contract between the defendant and the Fleet Corporation in Article Fifty-fifth hereof set forth.

Fifty-seventh: On or about the 28th day of February, 1918, Bethlehem Ship and the Fleet Corporation entered into an agreement whereby they agreed to modify the provisions of the contracts covering the construction of Hulls numbered 134 and 135 with reference to the price to be paid by the Fleet Corporation for the work of completing such vessels so that such contracts should provide that the price which the Fleet Corporation would pay for such work should be the cost to Bethlehem Ship of constructing the same, plus a profit of ten dollars ($10) per ton deadweight capacity of such vessels, and in consideration of the agreement by Bethlehem Ship so to modify such contracts the Fleet Corporation agreed that it would pay to Bethlehem Ship for such work such cost plus such profit of ten dollars ($10) per ton deadweight capacity of such vessels.

Fifty-eighth: Thereafter, from time to time, the Fleet Corporation directed Bethlehem Ship to employ overtime in the construction of Hulls numbered 143-149, 154 and 162-169, inclusive, and on or about

the 11th day of January, 1918, agreed that it would pay to Bethlehem Ship in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 2.625 (called the "overtime co-efficient") times the bonus (i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by Bethlehem Ship to its employees in respect of such overtime. Thereafter, Bethlehem Ship at the Union plant with the approval of the Fleet Corporation changed the basis of payments for week-day overtime in the construction of such vessels at such plant from time and-a-half to double-time and in addition, with like approval, used a substantially greater amount of Sunday and holiday time in the construction of such vessels than it had theretofore used, whereupon Bethlehem Ship and the Fleet Corporation agreed that the Fleet Corporation would pay to Bethlehem Ship in respect of all such overtime whether theretofore, or thereafter to be, employed by Bethlehem Ship in the construction of such vessels at the direction of the Fleet Corporation, at the rate of 2.625 times such bonus for time-and-a-half overtime, 1.8125 times such bonus in respect of week-day double-time overtime and 1.25 times such bonus in respect of Sunday and holiday double-time overtime. Bethlehem Ship in accordance with such agreements and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficient amounted to the sums set forth in column K of such Exhibit 3 hereto.

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Fifty-ninth: From time to time during the period of construction of Hulls numbered 140, 142, 143-149, 154 and 162-169, inclusive, the former owners, and later, the Fleet Corporation, under and pursuant to the terms of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of such contract it was agreed should be added to the price of each such vessel was as set forth in column J of such Exhibit 1.

Sixtieth: On or about the 4th day of November, 1917, the Shipbuilding Labor Adjustment Board made an award whereby it, among other things, ordered and directed the employers of labor in the shipyards of the San Francisco Bay District (in which the shipyard of the defendant was located) to place in effect certain rules as to conditions of employment including a schedule of minimum wages, retroactive to September 22, 1917, and on or about the 24th day of November, 1917, the Fleet Corporation ordered and directed Bethlehem Ship immediately to put into effect, at such shipyard, the schedule of wages so ordered and directed by such Adjustment Board. On or about the 10th day of December, 1917, the Fleet Corporation notified Bethlehem Ship that the Fleet Corporation would pay, effective on and after December 15, 1917, a war service payment of ten per cent. (10%) to all employees of Bethlehem Ship at such shipyard who should

work six consecutive days in any week, the payments to be computed on straight time at the minimum rate provided in such award of such Adjustment Board, and that the Fleet Corporation would reimburse Bethlehem Ship for such payments made by Bethlehem Ship, and also for the increases in wages paid by Bethlehem Ship by reason of such award of such Adjustment Board first above mentioned. From time to time thereafter the Fleet Corporation notified Bethlehem Ship of revisions in the adjustment of wages, hours and conditions of labor in shipbuilding plants and directed Bethlehem Ship to place such revisions in effect in such shipyard, in each case agreeing to reimburse Bethlehem Ship in full for all such war service payments and all payments made on account of such increases in wages directed by such award of such Adjustment Board, as from time to time revised. Thereafter, and on or about February 1, 1918, the Fleet Corporation directed Bethlehem Ship to pay said war service payment as a part of the regular wages of its employees in addition to the wages provided by the awards of such Adjustment Board. Thereafter, the Fleet Corporation ordered and directed certain increases in the wages paid piece-workers at such shipyard, and on or about April 23, 1918, agreed to reimburse Bethlehem Ship for such increases in the wages of piece-workers authorized by it. Thereafter, and on or about the 24th day of October, 1918, such Adjustment Board ordered and directed certain additional increases in the wages of employees employed in the shipyards on the Pacific Coast, retroactive to August 1, 1918, and on or about November 5, 1918, the Fleet Corporation ordered and directed Bethlehem Ship to place such schedule in

effect in such shipyard and agreed to reimburse Bethlehem Ship for added wage costs incurred thereby. The increased cost of labor actually incurred by Bethlehem Ship in the construction of Hulls numbered 140, 142-149, 154 and 162-169, inclusive, pursuant to the aforementioned orders and directions of the Fleet Corporation and for which the Fleet Corporation agreed to reimburse Bethlehem Ship as aforesaid was as set forth in column M of such Exhibit 3.

Sixty-first: Bethlehem Ship completed such vessels so included in such requisition order and listed in column D of such Exhibit 1 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the Union plant on or about the dates listed in such Exhibit 1, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant and Bethlehem Ship duly performed all the terms and conditions of all the contracts therefor on their part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Sixty-second: After the completion and delivery of the vessels and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the de-

fendant and/or Bethlehem Ship on account of the construction of such vessels to be as set forth in columns I, J, K, L, M, N, O, P and Q of such Exhibit 1.

Sixty-third: From time to time during and after the period of construction thereof, the former owners, and, later, the Fleet Corporation, paid to the defendant and, later, to Bethlehem Ship, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 1.

Sixty-fourth: Although duly requested, the Fleet Corporation has failed and refused to pay on account of the construction of such vessels, the amounts set forth in column S of such Exhibit 1, and such amounts together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to Bethlehem Ship.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, but in addition thereto, says:

Sixty-fifth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet.

Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, however, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Sixty-sixth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary com-

panies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Sixty-seventh: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their

minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

> "Resolved that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Sixty-eighth: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and the defendants herein.

Insufficiency of Bill of Complaint

Sixty-ninth: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Claim for Credit

Seventieth: Not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, the defendant repeats and reavers each and every averment of Article Fifty-fourth to Sixty-fourth, inclusive, hereof with the same force and effect as if herein again alleged in full and says that Bethlehem Ship has duly presented to the Fleet Corporation and to the United States Shipping Board all of the defendant's and/or Bethlehem Ship's claims on account of the transactions in said Articles set forth and the Fleet Corporation and said Shipping Board have disallowed such claims, and that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth, should be reduced by the amounts now due and owing from the Fleet Corporation hereinbefore set forth, so that the complainant should recover nothing.

Counterclaim

Seventy-first: Not waiving but insisting on the defenses pleaded in the foregoing answer, but in addition thereto, the defendant repeats and reavers the averments in Articles Fifty-fourth to Sixty-fourth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name, the defendant should recover of the complainant the sum of Two hundred forty-one thousand four hundred

seventy-four dollars and fifty-seven cents ($241,474.57), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with the costs of this action.

2. That if the above prayer be not granted, then that the defendant recover of the complainant the sum of Two hundred forty-one thousand four hundred seventy-four dollars and fifty-seven cents ($241,474.57), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

3. That the defendant have such other and further relief as may be just and equitable.

CHARLES SINKLER,
Solicitor for the Defendant Union Iron Works Company.

CRAVATH, HENDERSON & DE GERSDORFF,
of Counsel.

July 25, 1925.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT AND COUNTERCLAIM OF THE DEFENDANT, BETHLEHEM SHIPBUILDING CORPORATION, LIMITED TO THE BILL OF COMPLAINT

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its solicitor, and for its reply to the answer, claim for credit and counterclaim of the defendant, the Bethlehem Shipbuilding Corporation, Ltd., states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act, 1928. Hereinafter in this reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Thirty-seventh of defendant's answer, claim for credit and counterclaim, complainant denies that any vessels whatever were constructed by defendant for the Fleet Corporation or that the Fleet Corporation made or entered into any contracts whatever with the defendant for the construction of plant facilities or other-

wise, or that the Fleet Corporation paid or disbursed from its own moneys any amount or amounts to the defendant. Complainant denies further that Exhibit 2 attached to defendant's answer contains a true and correct statement of the transactions referred to or the accounts covering such transactions. Complainant denies further that the contracts and authorizations referred to were made or given by the Fleet Corporation as principal and as the real party in interest, and avers that such contracts and authorizations were made and given by the Fleet Corporation solely in the capacity of agent of the United States of America and that the defendant at all times dealt with the Fleet Corporation in that capacity having full knowledge of such agency. Complainant denies that the defendant at the direction and approval of the Fleet Corporation and in accordance with the terms of said contracts and authorizations provided facilities as specified in column A of Exhibit 2 of defendant's answer at a cost to defendant as specified in column B of said exhibit.

Complainant denies that column C of said Exhibit 2 correctly sets forth the amount of moneys of complainant disbursed by the Fleet Corporation on account of said improvements and facilities. Complainant avers that the amounts of moneys of the complainant so disbursed were as follows:

Shipyard Plant:	Amount
(a) Union (Alameda)	$1,549,848,68
(b) Sparrows Point	2,616,789.71
(c) Sparrows Point	291,143.29
(d) Sparrows Point	33,719.81
(e) Harlan	140,711.02

(f) Home Office Building of South Bethlehem	200,000.00
Gross Total	$4,832,212.51

Complainant admits that its agent, the Fleet Corporation, has not paid the amounts set forth in column B and column E of said Exhibit and denies that either the complainant or the Fleet Corporation is obligated in any way to make such payments under the terms of the said contracts and authorizations or otherwise.

Complainant denies that defendant entered into agreements for the purchase of said improvements and facilities in February, 1920, or at any other time with representatives of the Fleet Corporation having authority to make such agreements. Complainant denies that defendant made an unqualified offer of about $1,300,000 for the said improvements and facilities and complainant avers that the alleged offer was contingent upon the payment by the United States of America of large amounts in settlement of baseless and unconscionable claims submitted by the defendant. Complainant admits that defendant notified the Fleet Corporation to remove the dredging, sewers, filling from lowlands, roadway improvements, building slips, and other improvements and facilities, such facilities being either incapable of removal or incapable of removal without destruction of all practical value and without an expenditure of enormous sums to restore the property of defendant that would have to be damaged or destroyed in the removal of said improvements and facilities. Complainant denies that the Fleet Corporation on its own behalf or as agent

of its principal, the United States of America, has abandoned said improvements and facilities to the defendant. Complainant avers that by the very nature of the said improvements and facilities they must either be destroyed by removal or remain as an integral part of the defendant's shipbuilding property; that the defendant well knew at the time the contracts and authorizations heretofore referred to were made and given that the improvements and facilities to be constructed thereunder could not be removed without practical destruction. Complainant avers that the said contracts and authorizations were utterly unconscionable in their terms and, therefore, were null and void; and complainant avers that the defendant should be required to return to complainant all the moneys wrongfully and unlawfully obtained under the said agreements and authorizations.

Third. Replying to paragraph Fifty-fourth of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant and the Fleet Corporation made and entered into the contracts referred to in said paragraph and further denies that each and every transaction under said contracts was carried out by the Fleet Corporation as the real party in interest thereunder. Complainant avers that each and every one of the contracts referred to in said paragraph are contracts between the defendant and the complainant, the United States of America; that said contracts were made and entered into by the complainant, the United States, acting through its authorized agent, the Fleet Corporation, which had been designated as such agent by an Executive Order of the President

of the United States dated July 11, 1917, and which was issued pursuant to the authority granted the President by the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act approved June 15, 1917; that the Fleet Corporation has not and never has had any right, title, or interest in or to any of the contracts mentioned or any of the ships to be built thereunder, or any of the claims or causes of action against the defendant; that the fact of such agency was fully disclosed to the defendant long before any of said contracts were entered into and that the defendant at all times dealt with the Fleet Corporation solely as an agent of the complainant.

Fourth. Replying to paragraph Fifty-fifth of defendant's answer, claim for credit and counterclaim, the complainant avers that the directions given the defendant to suspend work on certain hulls, as well as the directions given to the defendant to cancel the contracts for the construction of certain hulls, were given by the Fleet Corporation as the agent and representative of the United States pursuant to the Executive Order of July 11, 1917, and the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act approved June 15, 1917.

Fifth. Replying to paragraph Fifty-sixth of defendant's answer, claim for credit and counterclaim, the complainant avers that the notices, instructions, etc., mentioned in said paragraph were given by the Fleet Corporation solely as agent and representative of the United States pursuant to the Executive Order of the President and the laws of the United States heretofore mentioned.

Sixth. Replying to paragraph Fifty-seventh of the defendant's answer, claim for credit and counterclaim, the complainant avers that the notices, instructions, etc., mentioned in said paragraph were given by the Fleet Corporation solely as an agent and representative of the United States pursuant to the Executive Order of the President and the laws of the United States heretofore mentioned.

Seventh. Replying to paragraph Fifty-eighth of defendant's answer, claim for credit and counterclaim, the complainant avers that the contract mentioned in said paragraph was canceled by the Fleet Corporation, acting as an agent of the United States, pursuant to the authority above mentioned.

Eighth. Replying to paragraph Fifty-ninth of defendant's answer, claim for credit and counterclaim, the complainant avers that the modifications and instructions referred to in said paragraph were given by the Fleet Corporation as the agent of the United States pursuant to the authority above mentioned.

Ninth. Replying to paragraph Sixtieth of defendant's answer, claim for credit and counterclaim, the complainant avers that the instructions regarding the suspension and cancellation mentioned in said paragraph were given by the Fleet Corporation as the agent of the United States pursuant to the authority above mentioned.

Tenth. Replying to paragraph Sixty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant agreed to construct any vessels whatever for the Fleet Corporation or that any changes were au-

thorized by the Fleet Corporation except as the agent of the United States. Complainant further denies that any vessels were delivered to the Fleet Corporation except as the agent of the United States, but avers that the contracts referred to were contracts between the defendant and the United States and that all the transactions of the Fleet Corporation were made and performed by it as the agent of the United States pursuant to the authority above mentioned.

Eleventh. Replying to paragraph Sixty-second of defendant's answer, claim for credit and counterclaim, the complainant denies that the rate of wages actually paid by the defendant in the construction of the vessels referred to in said paragraph was by the direction or with the approval of the Fleet Corporation, increased over the schedule of wages provided in Article XIX of each of the contracts referred to in said paragraph.

The complainant avers that in all of the said contracts except Contracts Nos. 177 S. C., 191 S. C., 230 S. C. and 301 S. C., the language of Article XIX of each of said contracts is so uncertain, indefinite, and conflicting that it is impossible to say what schedule is meant thereby and that with the exception of wage increases paid to subcontractors it is impossible to determine the increased labor costs over and above such an uncertain, indefinite, and conflicting base, and complainant avers that the increase in cost due to wage increases to employees of subcontractors on said contracts, and the amounts by which the labor cost actually incurred in the construction of the vessels built under Contracts Nos. 177 S. C., 191 S. C., 230 S. C., and 301 S. C. was in-

creased over the labor cost that would have been incurred if the schedules referred to in Article XIX of said contracts had remained in force during the period of construction, are as follows:

Line No.	Contract No.	Exhibit No. referred to in Exhibit 1 of defendant's answer	Amount
1	177	5	$1,572,938.47
2	178	6	5,220.04
3	179	7	1,069.69
4	182	8	.00
5	183	9	.00
6	184	10	3,987.46
7	191	11	145,190.56
8	196	12	317.50
9	226	13	2,080.61
10	230	14	205,264.79
11	299	15	.00
12	300	16	560.86
13	301	17	898,230.47
14	312	18	.00
15	313	19	.00
16	314	20	5,418.52
17	340	21	.00
18	465	22	.00
			$2,840,278.97

Complainant avers further that if the court should determine that the wage increase provisions of said Article XIX of Contracts Nos. 178 S. C., 179 S. C., 183 S. C., 184 S. C., 196 S. C., 226 S. C., 299 S. C., 300 S. C., 312 S. C., 313 S. C., 314 S. C., and 465

S. C., are not void for uncertainty, then and in that event, the complainant avers that the only schedule of wages referred to in Article XIX of each said contract that can be identified is the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918, for the Harlan and Sparrows Point shipyards, and under date of April 6, 1918, for the Fore River and Moore shipyards. Complainant avers that the aggregate amount by which the actual labor cost of the vessels constructed under said contracts was increased over the labor cost that would have been incurred if the said schedules of the Shipbuilding Labor Adjustment Board had remained in force was, as found by audit to be as follows:

Contract No.	Amount
178	$415,530.84
179	243,927.50
183	371,666.99
184	400,369.64
196	2,654.94
226	679,185.12
299	319,025.08
300	334,415.07
312	.00
313	.00
314	1,146,620.48
465	.00
	3,913,395.66

Twelfth. Replying to paragraph Sixty-third of defendant's answer, claim for credit and counterclaim, the complainant admits that from time to time during the construction of said vessels certain

changes in the plans and specifications were made, but complainant avers that such changes were made on orders of the complainant acting through its agent, the Fleet Corporation. Complainant denies that the net amount by which the estimated cost of such vessels specified in Article XIX of such contract was increased or diminished on account of such changes was as set forth in column (f) of Exhibit 1 referred to in said paragraph.

Complainant admits that, with the exception of the amount on line No. 18, the amounts by which the costs of said vessels were increased as a result of changes in plans and specifications are set forth correctly in column (f) of Exhibit 1, attached to defendant's answer. Complainant avers with respect to the amount shown on line No. 18 of column (f) of said Exhibit 1 that the amount of increase in cost due to changes in plans and specifications under Contract No. 465 is immaterial for the reason that complainant and the defendant have by stipulation agreed, for the purpose of determining the excess of the estimated cost as revised in accordance with Article XIX of said contract over the actual cost of the completed vessels built under said contract, that the revised estimated cost of each of said vessels was in excess of the actual cost thereof by an amount such that the difference between the actual and revised estimated cost was in excess of $400,000.00.

Thirteenth. Replying to paragraph Sixty-fourth of the defendant's answer, claim for credit and counterclaim, the complainant avers that all changes and additions or modifications ordered by the Fleet Corporation were ordered by said Fleet Corporation as

the agent and representative of the United States, and not in its own behalf. Complainant denies that by reason of such changes the estimated cost of each of three vessels specified in Article XIX of such contract was increased by more than $1,440,000 and that the fixed sum for profit for each of such three vessels was increased by more than the sum of $105,000. Complainant further denies that the Fleet Corporation, either on its own behalf or as the agent of the United States, made and entered into an agreement on or about April 8, 1921, or at any other time, whereby it was agreed that the sum by which such estimated cost of each of such vessels should be increased on account of such changes made up to March 1, 1921, should be fixed at such sum of $1,440,000 and that the sum by which such fixed sum for profit for each of such three vessels should be increased on account of such changes should be fixed at such sum of $105,000. Complainant denies that the net amount by which the estimated cost of such three vessels was increased by said changes after March 1, 1921, was $1,183,773. The complainant further denies that by reason of all the changes referred to in said paragraph the net amount of the estimated cost of such three vessels was increased at least $5,503,773 or that the net amount of the increase in the fixed sum for profit for each of such vessels was increased $135,353.12. Complainant avers that the total amount of the increase in the estimated cost of said three vessels on account of changes, extras, and modifications is immaterial for the reasons stated heretofore in paragraph twelfth hereof.

Fourteenth. Replying to paragraph Sixty-fifth of defendant's answer, claim for credit and counter-

claim, the complainant admits the allegations therein contained, but avers that for the reasons stated in paragraph Twelfth of this reply the averments contained in said paragraph are wholly immaterial to any issue involved in this litigation.

Fifteenth. Replying to paragraph Sixty-sixth of defendant's answer, claim for credit and counterclaim, the complainant admits that after the completion and delivery of the vessels therein referred to the Fleet Corporation made an audit of the total cost of such completed vessels and the total cost of the canceled vessels. The complainant admits that the Fleet Corporation made a determination of the revised estimated cost as provided in Article XIX of each such contract in so far as said article could be interpreted. Complainant denies that the cost and expenditure incurred by the defendant determined as provided in Article XVII of each such contract and the revised estimated cost thereof were found by the Fleet Corporation upon audit to be, and approved by it as set forth in column H and column G, respectively, of Exhibit 1 attached to defendant's answer. Complainant avers that the costs as found by audit are as shown in column 6 of Complainant's Exhibit A hereto attached, and the revised estimated cost, in so far as it was possible to determine such revised estimated cost, was as follows:

Line No.	Contract No.	Exhibit referred to in Ex. 1 of Deft's Answer	Revised Estimated Cost
1	177	5	$27,073,433.75

Line No.	Contract No.	Exhibit referred to in Ex. 1 of Deft's Answer	Revised Estimated Cost
2	178	6	9,080,179.04
3	179	7	6,235,397.69
4	182	8	.00
5	183	9	5,582,209.00
6	184	10	6,389,863.70
7	191	11	8,762,951.08
8	196	12	1,301,257.61
9	226	13	12,011,482.61
10	230	14	4,372,868.99
11	299	15	5,539,419.00
12	300	16	6,041,599.86
13	301	17	19,769,762.50
14	312	18	.00
15	313	19	.00
16	314	20	1,878,519.02
17	340	21	.00
18	465	22	16,271,907.16

Sixteenth. Replying to paragraph Sixty-seventh of defendant's answer, claim for credit and counterclaim, complainant denies that the defendant incurred items of cost in the amounts as set forth in column I of Exhibit 1, or in any other amount. Complainant denies that the actual cost of the vessels under each such contract determined under provisions of Article XVII of each such contract was as set forth in column J of Exhibit 1, and complainant avers that the actual cost of such vessels, including the cost of surplus materials, was no greater sum than the figures shown in column

6, headed "Total cost", on Exhibit A, attached to this reply.

Seventeenth. Replying to paragraph Sixty-eighth of the defendant's answer, claim for credit and counterclaim, complainant denies that all the materials and supplies purchased for and not used in the construction of the vessels referred to became and remained the property of the Fleet Corporation. The complainant avers that such materials and supplies were at all times the property of the complainant. Complainant admits that the value of such materials and supplies was determined by the Fleet Corporation, acting as an agent of complainant. Complainant denies that the cost of the vessels after deducting the value of surplus materials was as set forth in column K of Exhibit 1 attached to the defendant's answer. Complainant avers that the actual cost of such vessels after deducting the value of the surplus materials and supplies was as follows:

Contract No.:	Net Amount after Deducting Value of Surplus Materials
177	$22,412,491.57
178	9,757,562.79
179	5,552,545.07
182	11,195,659.89
183	5,287,865.43
184	6,086,293.48
191	6,345,388.74
196	1,123,782.08
226	10,891,429.05
230	3,192,236.09
299	4,848,595.35
300	5,122,587.87

Contract No.:	Net Amount after Deducting Value of Surplus Materials
301	15,274,468.69
314	13,021,970.30
465	15,071,907.16

Eighteenth. Replying to paragraph Sixty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the amount of difference between the revised estimated cost of the vessels under each of said contracts and the actual cost thereof reduced by the value of such surplus materials and supplies is as set forth in column L of Exhibit 1 attached to the defendant's answer. Complainant avers that the difference between the actual cost of such vessels reduced as aforesaid by such cost of surplus materials and supplies and the revised estimated cost of the vessels, in so far as such estimated cost can be revised, is as follows:

Contract No.:	Excess of revised estimated cost over actual net cost
177	$ 4,660,942.18
178	677,383.75 rel
179	682,852.62
182	.00
183	294,343.57
184	303,570.22
191	2,417,562.34
196	177,475.53
226	1,120,053.56
230	1,180,632.90
299	690,823.65
300	919,011.99
301	4,495,293.81

Contract No.:	Excess of revised estimated cost over actual net cost
312	.00
313	.00
314	1,143,451.28 red
340	.00
465	1,200,000.00
	16,321,727.34

Complainant denies that the amounts of such difference are savings or that the defendant is entitled to any part of such amounts for the reasons set forth in the complaint.

Nineteenth. Replying to paragraph Seventieth of defendant's answer, claim for credit and counterclaim, complainant admits that with the exception of the amounts stated in line 4 and line 18 of column M of said Exhibit 1 the amounts there set forth are the fixed fees specified in or calculated in accordance with such contracts. Complainant avers that the correct amount of fixed fees for profit calculated in accordance wtih the terms of Contract No. 182 is $1,119,565.99, instead of the sum of $1,121,575.71, as shown on line 4, column M, of defendant's Exhibit 1; and that the correct amount of fixed fees for profit for both completed and cancelled ships, calculated in accordance with the terms of Contract No. 465, is $1,428,203.52, instead of the sum of $1,599,621.49, as shown in column M, line 18, of defendant's Exhibit 1. And complainant further avers that all of said contracts referred to in said paragraph in so far as they relate to the compensation to be paid the defendant are invalid and not binding upon the claimant for the reasons set forth in the

complaint and that the amount of compensation to which the defendant is entitled on each of said contracts is not in excess of the sums shown in column 11 of Exhibit A, hereto attached.

Twentieth. Replying to paragraph Seventy-first of defendant's answer, claim for credit and counterclaim, complainant denies that any sum whatever is due from the Fleet Corporation or from the complainant to the defendant on account of savings.

Twenty-first. Replying to paragraph Seventy-second of defendant's answer, claim for credit and counterclaim, complainant admits that the defendant kept accounts of the cost of construction of the vessels therein referred to and that the Fleet Corporation, as agent of the United States of America, checked such accounts from time to time. Complainant avers that the accounts of defendant as checked by the Fleet Corporation were found to be improperly kept, but owing to the fact that the Fleet Corporation, as agent of the complainant, was paying all costs of construction currently, it was necessary to make payments without adequate investigation at the time. Complainant admits that upon the completion of the vessels the Fleet Corporation, acting as aforesaid, made an audit of the actual cost of such vessels. The complainant avers that all payments referred to in said paragraph Seventy-second were made by the Fleet Corporation, as agent of the United States of America, from moneys of the United States of America, and that all payments on account of alleged savings were made by mistake of fact and by mistakes of law. The complainant denies that the amounts so paid by the Fleet Corporation to the defendant on account of such actual

costs, such fixed fees, and such savings are as set forth in columns O, P, and Q, respectively, of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts of such payments are as set forth in columns 7, 12, 15, and 17 of Exhibit A, hereto attached.

Twenty-second. Replying to paragraph Seventy-third of defendant's answer, claim for credit and counterclaim, complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in columns R, S, T, and U, respectively, of Exhibit 1 to defendant's answer. Complainant denies that such amounts, together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation or from the complainant to the defendant. Complainant avers that by mistakes of fact and mistakes of law the Fleet Corporation, acting as agent for the complainant, by payments set forth in columns 7, 12, 15, and 17 of Exhibit A, hereto attached, has largely overpaid the defendant on account of the cost of construction of said vessels and on account of the profits properly payable to the defendant for the construction of such vessels. Complainant avers that a correct statement of the amounts of such overpayments on account of cost, fixed fees, and savings is shown in columns 8, 13, 15 and 18 of Exhibit A, attached hereto.

Twenty-third. Replying to paragraph Seventy-fourth of defendant's answer, claim for credit and counterclaim, complainant admits the averments therein contained.

Twenty-fourth. Replying to paragraph Seventy-fifth of defendant's answer, claim for credit and

counterclaim, the complainant denies that on or about the dates, respectively, specified in column G of Exhibit 3 attached to defendant's answer the shipbuilders listed in column A thereof, respectively, and the Fleet Corporation, acting as principal, entered into the contracts in writing referred to; and complainant further denies that the Fleet Corporation, on its own behalf, made any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that contracts for the completion of said vessels were entered into between the respective shipbuilders mentioned in said paragraph and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that on final acceptance of each such vessel the defendant agreed to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessel to the United States. The complainant avers that the contracts entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the

Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the Fleet Corporation either in its own behalf or as an agent of the United States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on a cost plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contracts was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contracts and every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that any of said shipbuilding companies named in paragraph Seventy-fifth dealt with the Fleet Corporation as principal, but avers that such shipbuilding companies at all times dealt with the Fleet Corporation solely as an agent of the United States.

Twenty-fifth. Replying to paragraph Seventy-sixth of defendant's answer, claim for credit and

counterclaim, complainant denies that the contracts referred to were contracts between such corporations and the Fleet Corporation, but avers that the contracts referred to were contracts between such corporations and the United States of America represented by the Fleet Corporation.

Twenty-sixth. Replying to paragraph Sixty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies that the contracts referred to in said paragraph were contracts between the Fleet Corporation on the one hand and Samuel L. Moore & Sons Corporation and Harlan & Hollingsworth Corporation on the other. Complainant avers that said contracts were contracts between Moore and Harlan and the United States of America, represented by the Fleet Corporation as agent.

Twenty-seventh. Replying to paragraph Seventy-eighth of defendant's answer, claim for credit and counterclaim, complainant denies that the Fleet Corporation entered into any of the agreements mentioned therein as principal, but avers that such agreements, modifications and changes were made by the defendant and the complainant acting through its agent, the Fleet Corporation.

Twenty-eighth. Replying to paragraph Seventy-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation entered into any of the agreements mentioned in said paragraph. Complainant avers that the contracts for the construction of the hulls mentioned in said paragraph were changed and modified so that the defendant should be entitled to

cost plus a profit of $10 per dead-weight ton on such vessels.

Twenty-ninth. Replying to paragraph Eightieth of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth, inclusive, of complainant's complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable overtime coefficient amounted to the sums set forth in column K of defendant's Exhibit 3, and avers that the sums set forth in said column K are inconsistent with the sums stipulated and agreed to by both parties as correct, and inconsistent with the sums set forth in Exhibit 2, attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation, No. 11970 in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen, and the excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of complainant to defendant on account of overtime bonus paid to workmen are correctly set forth in column 6 of Exhibit B, hereto attached.

Thirtieth. Replying to paragraph Eighty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, entered into any of the con-

tracts or agreements mentioned in said paragraph. Complainant avers that the defendant and the complainant, the United States of America, acting through its agent, the Fleet Corporation, entered into an agreement by which the defendant should be reimbursed for certain payments made to foremen, assistant foremen, leading men, and other heads of departments in order to expedite the completion of the hulls mentioned in said paragraph. Complainant admits that the amount of such payments to which the defendant is entitled as a credit is correctly set forth in column L of Exhibit 3, attached to defendant's answer.

Thirty-first. Replying to paragraph Eighty-second of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant, acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 3, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit B, hereto attached.

Thirty-second. Replying to paragraph Eighty-third of defendant's answer, claim for credit and counterclaim, the complainant denies that the $0.60 per dead-weight ton provision therein referred to is legally binding upon the complainant or its agent, the Fleet Corporation, in that it provides for ex-

cessive, unreasonable, and unconscionable profits for which there is no consideration, and for the further reason that the said provision was superseded by an agreement under which the complainant acting through its agent, the Fleet Corporation, agreed with the defendant to reimburse, and did reimburse the defendant for the actual additional cost due to increases in wage rates over the base rates specified in the contract, and defendant agreed to accept and did accept said reimbursement, and defendant is entitled to receive from complainant only such amount as represents the actual increase in wages paid by it over and above the amount of wages which would have been paid by it at the rates in force at the date of said contracts increased by 10 per cent, which increase amounts to the sums set forth in column 8, lines 16, 17, 20, and 21 of Exhibit B, hereto attached.

Thirty-third. Replying to paragraph Eighty-fourth of defendant's answer, claim for credit and counterclaim, the complainant denies that there became due from the Fleet Corporation to the defendant on account of the matters alleged in said paragraph any sum whatever. Complainant admits that there became due from the complainant to the defendant credits equal to the amounts set forth in column N of Exhibit 3, attached to defendant's answer.

Thirty-fourth. Replying to paragraph Eighty-fifth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about February 1, 1918, the Fleet Corporation, as principal or as agent of the complainant, directed the defendant to pay certain war service payments

as a part of the regular wages of its employees in addition to the wages provided by the Shipbuilding Labor Adjustment Board. Complainant avers that on or about December 10, 1917, the Fleet Corporation, as agent of the complainant, notified the defendant that on February 1, 1918, the said 10 per cent increase would be effective as a regular permanent part of the wage schedule effective after that date. The complainant denies that the Fleet Corporation, as principal, agreed to reimburse the defendant for any of the payments averred in said paragraph, but admits that the Fleet Corporation, as agent of the complainant, agreed to reimburse the defendant for increases due to such awards of the Shipbuilding Labor Adjustment Board and orders given by the Fleet Corporation as agent of the complainant. Complainant denies that the increased costs of labor actually incurred by the defendant in the construction of the hulls mentioned in said paragraph were as set forth in column M of Exhibit 3, attached to defendant's answer. Complainant avers that the increased costs of labor actually incurred by the defendant for the construction of the hulls mentioned in said paragraph are as set forth in column 8 of Exhibit B, hereto attached.

Thirty-fifth. Replying to paragraph Eighty-sixth of the defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant duly performed all the terms and conditions of all the contracts for said vessels in that defendant did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of the said vessels were completed in accordance with the orders of the

Fleet Corporation as principal or that hull No. 142 was ever completed either for the Fleet Corporation as principal, or for the complainant. Complainant avers that hulls Nos. 450 and 451 were cancelled and never completed. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Thirty-sixth. Replying to paragraph Eighty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant obtained for Fore River any of the materials mentioned in said paragraph. Complainant avers that said materials were obtained for Fore River by the Fleet Corporation, acting as an agent of the United States, and by Luckenbach, the former owner, from other contractors, the cost of which aggregates $233,600.00, which was paid by said Luckenbach and the complainant, acting through the Fleet Corporation, direct to such contractors. Complainant denies that the total actual cost of constructing hulls Nos. 297 and 298 determined in accordance with the provisions of such contracts was $5,225,339.31, but avers that such cost was $4,934,702.16. Complainant denies that the said sum of $233,600.00 spent for materials by Luckenbach and by the complainant constituted any part of the cost of said hulls on which the defendant was entitled to profit.

Thirty-seventh. Replying to paragraph Eighty-eighth of defendant's answer, claim for credit and counterclaim, complainant denies that the defendant

purchased from the Fleet Corporation, as principal, any materials whatever. Complainant avers that the defendant purchased such materials in the sum of $32,196.42 from the complainant, and the defendant agreed that for the purpose of determining profit payable to defendant there should be deducted from the total cost of constructing the vessels the sum of $32,196.42. Complainant denies that the actual cost so reduced was the sum of $5,193,142.89, and avers that the said sum was $4,906,562.05, and no more, made up as follows:

Total cost of construction	$4,934,702.16
Plus unclaimed wages added for profit purposes only	4,063.91
Gross total	$4,938,766.07
Deduct surplus materials	32,196.42
Total cost to bear profit	$4,906,569.65

Thirty-eighth. Replying to paragraph Eighty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and were receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatever had become payable by it to the defendant on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J,

K, L, M, N, O, P, and Q of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the defendant, on account of the construction of said vessels are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12, of Exhibit B, hereto attached.

Thirty-ninth. Replying to paragraph Ninetieth of defendant's answer, claim for credit and counterclaim, complainant denies that the amounts paid to the shipbuilders and to the defendant by the former owners and the Fleet Corporation are as set forth in column R of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which were paid to the said shipbuilders and to the defendant by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from the funds of the complainant, are as set forth in column 13 of Exhibit B, hereto attached.

Fortieth. Replying to paragraph Ninety-first of defendant's answer, claim for credit and counterclaim, the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 3, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant, and complainant further avers that the amounts set forth in said column S of such Exhibit 3 do not correctly represent balances in the accounts between the complainant and the defendant. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as

agent of the complainant, has largely overpaid the defendant from moneys of the complainant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit B, hereto attached.

Forty-first. Replying to paragraph Ninety-second of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation in said paragraph contained and denies that the audits referred to therein were delayed to any extent by the complainant or by its agent, the Fleet Corporation, or that the defendant has sustained any damage whatsoever by reason of any fault of the complainant or its agent, the Fleet Corporation, and, on the contrary, complainant avers that the delay in making said audits was due solely to the fault and misconduct of the defendant. Complainant avers that in accordance with the terms of said contracts the complainant was required to establish and keep suitable and accurate accounts and records so as to show therein the actual cost of all work done and performed by the defendant. Complainant further avers that at the completion of the work the Fleet Corporation, acting for its principal, the complainant, did attempt to audit the accounts of the defendant and found that the defendant, in violation of the terms of said contracts and of its duty and obligations to the complainant, had failed and neglected to establish and keep suitable accounts and records, but, on the contrary, wrongfully and knowingly established and kept unsuitable, misleading and erroneous records in the keeping of said accounts, and not only created and maintained such misleading and erroneous records, but changed and altered records so that the accounts were presented

falsely and made to show improper credits to the defendant of more than $5,000,000.00, with the result that the complainant, through its agent, the Fleet Corporation, was forced to reaudit the books and records of the defendant at great expense to the complainant.

Forty-second. Replying to paragraph Ninety-third of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, on its own responsibility, employed Perley Morse and Company to audit certain accounts of the defendant. Complainant admits that the Fleet Corporation, acting as agent of the complainant, employed Perley Morse and Company to make a reaudit of the accounts of the defendant on certain contracts which required the defendant to establish and keep suitable and accurate accounts and records. Complainant avers that the defendant in violation of the provisions of the contracts under which the complainant, through its agent, the Fleet Corporation, was to have free access for the purpose of auditing the accounts refused to permit the said Perley Morse and Company to enter the yards or have access to the books and records. Complainant further avers that defendant denied the force of the said Perley Morse and Company access to the books and records for a period of approximately three months and that complainant paid to the said Perley Morse and Company the sum of $90,019.55 for the period while the force of the said Perley Morse and Company was prevented from having access to the books and records of the defendant. Complainant avers that the defendant was duly notified that the cost of the auditing force of the

said Perley Morse and Company would be charged against the defendant for the period of time while the said force was prevented from having access to the books and records of the defendant. Complainant denies that the Fleet Corporation, either on its own behalf or as agent of the complainant, arbitrarily and without any agreement or liability of defendant deducted $90,019.55 from an undisputed balance due from the Fleet Corporation or the complainant to the defendant. Complainant avers that by its conduct in refusing access of the auditors to its books and records the defendant became liable for the amount which it was necessary for the complainant to pay for the services of the auditors. Complainant denies that any sum whatsoever is due and owing from the Fleet Corporation or the complainant to the defendant on account of the propelling machinery mentioned in said paragraph Ninety-third, and complainant avers that, on the contrary, the Fleet Corporation, as agent of the complainant, has largely overpaid defendant from the funds of the complainant on account of said propelling machinery.

Forty-third. Replying to paragraph Ninety-fourth of defendant's answer, claim for credit and counterclaim, the complainant admits the allegations therein contained, except that complainant avers that each and every act therein alleged as an act of the Fleet Corporation was an act of the complainant through the agency of the Fleet Corporation and denies that there became due from the Fleet Corporation the sum of $2,570.00, but complainant admits that the defendant is entitled to a credit in the amount of $2,570.00 from the complain-

ant on account of the transactions mentioned in said paragraph.

Forty-fourth. Replying to paragraph Ninety-fifth of defendant's answer, claim for credit and counterclaim, the complainant admits that Charles M. Schwab became Director General of the Fleet Corporation at the instance of the United States Shipping Board. Complainant has no knowledge or information as to the other averments contained in said paragraph.

Forty-fifth. Replying to paragraph Ninety-sixth of defendant's answer, claim for credit and counterclaim, complainant admits that Charles M. Schwab, shortly after taking office as Director General of the Fleet Corporation, wrote and forwarded to the President and Trustees of the Fleet Corporation the letter set forth in said paragraph. Complainant avers that said letter did not relieve the said Charles M. Schwab as an officer of the Fleet Corporation, which was then and had been for many months prior thereto the direct agent of the United States, from the responsibility of supervising and directing the work of the Fleet Corporation as such agent or from his obligation to see that the interests of the Government were properly protected.

Forty-Sixth. Paragraph Ninety-seventh admitted.

Forty-seventh. Replying to paragraph Ninety-eighth of defendant's answer, claim for credit and counterclaim, the complainant denies that the understanding and agreement alleged in said paragraph ever existed. Complainant avers that at no time was there any understanding and agreement between

the said Charles M. Schwab and the said Fleet Corporation, as agent of the complainant or otherwise, to the effect that the said Charles M. Schwab should be relieved of the performance of his duty with respect to the relations between the Fleet Corporation and the defendant. Complainant further avers that the said Charles M. Schwab did take part in said relations between the defendant and the Fleet Corporation, as agent of the United States.

Forty-eighth. Replying to paragraph Ninety-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that there were any contracts whatever between the Fleet Corporation, as principal, and the defendant, and avers that all the contracts mentioned in said paragraph were between the complainant and the defendant. The complainant denies that all of the contracts listed in Article XXIX of the bill of complaint and in Exhibit 1 attached to the defendant's answer, with the exception of contracts numbered 299, 300, 301, 312, 313, 314, 340, and 465 were agreed upon and signed before Mr. Schwab entered upon his duties as Director General of the Fleet Corporation. Complainant avers that contracts numbered 230, 299, 300, 301, 312, 313, 314, 340, and 465 were signed after Mr. Schwab entered upon his duties as Director General of the Fleet Corporation. The complainant has no knowledge or information concerning the allegation in said paragraph that Charles M. Schwab had nothing to do with the negotiation of contract 465 as in the case of all such other contracts.

Forty-ninth. Replying to paragraph One Hundredth of defendant's answer, claim for credit and

counterclaim, the complainant denies each and every allegation therein contained. Complainant avers that the vessels mentioned therein were vessels of a standard type which the defendant and its predecessors had been building for many years and that the defendant had adequate information upon which to base approximate estimates of what the ultimate cost of such vessels would be.

Fiftieth. Replying to paragraph One Hundred First of defendant's answer, claim for credit and counterclaim, complainant admits that the defendant prepared and submitted to the Fleet Corporation statements of accounts but denies that such statements of accounts showed any balance due and unpaid by the Fleet Corporation on account of such vessels and special improvements and plant facilities. Complainant avers that said statements of accounts were statements which purported to set up balances on the relationships between defendant and the complainant, acting through the Fleet Corporation as its agent. The complainant denies that the defendant cooperated with and offered every assistance to the Fleet Corporation in making the audits referred to in said paragraph. Complainant avers that the defendant repeatedly placed obstacles in the way of the completion of such audits.

Fifty-first. Replying to paragraph One Hundred Second of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, either as principal or as agent of the United States, referred all the claims of the defendant to the Honorable William Marshall Bullitt, one of its special counsel, for consideration and report thereon. Complainant avers that said Bullitt

was requested by the Chairman of the United States Shipping Board to examine into the claims of defendant against the complainant and to give his opinion thereon. Complainant admits that the defendant presented certain claims to said Bullitt and made various offers of compromise, but denies that any such offers were for compromises with the Fleet Corporation.

Fifty-second. Replying to paragraph One Hundred Third of defendant's answer, claim for credit and counterclaim, the complainant avers that the said Bullitt made a report upon certain claims made by the defendant and upon certain claims made by the complainant, but that all the claims of either the defendant or the complainant were not presented to the said Bullitt and that as to such unpresented claims he made no report whatever. The complainant further avers that the report of the said Bullitt was submitted to the United States Shipping Board, which was then empowered by law to hear, adjust, determine, and settle all claims arising out of the transactions mentioned in the complaint and defendant's answer.

Fifty-third. Replying to paragraph One Hundred Fourth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation ignored the report of said Bullitt, and complainant avers that said report was never made to the Fleet Corporation in any capacity, but was a report made to the Chairman of the United States Shipping Board. Complainant avers that the United States Shipping Board notified the defendant that the said United States Shipping Board would hold a hearing upon the recommendations of

the Standing Committee on Claims of the United States Shipping Board, and the defendant was invited to be present at the said hearing. Complainant avers that defendant did appear by Charles M. Schwab, Chairman of the Board of Directors of the defendant, by the President of the defendant corporation, and other high officers of the defendant corporation, and such representatives of defendant had every opportunity to and did present at length arguments in favor of their claims and arguments against the counterclaims of the complainant. Complainant denies that the defendant was notified that the United States Shipping Board had approved the recommendation of the Standing Committee on Claims of the Fleet Corporation. Complainant further denies that such a committee ever existed. Complainant admits that the defendant was notified that the United States Shipping Board had approved the recommendation of the Standing Committee on Claims of the United States Shipping Board to the effect that the complainant did not owe the defendant anything on account of the transactions involved in the claims, but on the contrary the defendant owed the United States upwards of $11,000,000.00.

Fifty-fourth. Replying to paragraph One Hundred Fifth of defendant's answer, claim for credit and counterclaim, the complainant denies each and every averment in said paragraph contained.

Fifty-fifth. Replying to paragraph One Hundred Sixth of defendant's answer, claim for credit and counterclaim, complainant avers that said paragraph contains incorrect and improper conclusions

of law which the complainant deems unnecessary to further refute in this reply.

Fifty-sixth. Replying to paragraph One Hundred Seventh of defendant's answer, claim for credit and counterclaim, complainant repeats and reaffirms every averment heretofore contained in this reply with the same force and effect as if herein again averred in full. Further replying to said paragraph, complainant denies that the defendant is entitled to any other or further credits than those set forth in column 16 of Exhibit A, hereto attached, and those set forth in column 12 of Exhibit B, hereto attached, except that the defendant is entitled to a credit of $258,048.58 on account of fees for profit on the construction of the Liberty plant and a credit of the sum of $2,570.00 on account of the restoration of land formerly used as a tennis court. Complainant further avers that the credits herein admitted do not represent sums which the defendant is entitled to receive, but only represent credits which should be allowed against the payments made by the complainant to the defendant as shown in column 17 of Exhibit A, hereto attached, and column 13 of Exhibit B, hereto attached, and in paragraph Second of this reply and against other overpayments and charges due from the defendant to the complainant.

Fifty-seventh. Replying to paragraph One Hundred Eighth of defendant's answer, claim for credit and counterclaim, the complainant repeats and reavers every averment heretofore contained in this reply with the same force and effect as if herein again averred in full. Complainant denies that there is any sum whatever due and owing from the com-

plainant or the Fleet Corporation to the defendant and denies that the defendant should recover of the complainant the sum of $8,839,820.80, or any other sum whatever.

Special Reply and Defense to Defendant's Claim for Credit and Counterclaim

Fifty-eighth. Not waiving but insisting upon all the averments contained in the foregoing reply, but in addition thereto and as a special reply, the complainant avers that the defendant has not presented its claim for credit or counterclaim to the accounting officers of the Treasury in accordance with Section 951 of the Revised Statutes for their examination and the said accounting officers have neither allowed or disallowed said claim in whole or in part and defendant has not pleaded and it is not the fact that the defendant is in possession of vouchers not before in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer, claim for credit, and counterclaim.

Complainant having fully replied to all the averments contained in the answer, claim for credit and counterclaim, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLE,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel, United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board.

EXHIBIT A

STATEMENT SHOWING CREDITS TO SHIPBUILDER, PAYMENTS TO SHIPBUILDER, AND RECOVERABLE OVERPAYMENTS TO SHIPBUILDER ON ACCOUNT OF CONSTRUCTION COST, PROFIT, AND HALF SAVINGS ON ALL DIRECT CONTRACT SHIPS, BOTH COMPLETED AND CANCELED

Cause of action	Contract No.	Shipyard plant	CREDITS AND PAYMENTS FOR COST					CREDITS AND PAYMENTS FOR PROFIT					"HALF SAVINGS"		SUMMARY TOTALS		
			Credits for construction cost			Payments to shipbuilder account of cost	Recoverable overpayments to shipbuilder on cost	Net cost—basis of profit	Percentage of cost conceded as profit	Credits to shipbuilder for profit	Payments to shipbuilder account of profit	Recoverable overpayments to shipbuilder on profit	Credit to shipbuilder	Recoverable payments to shipbuilder on "half savings"	Grand total credits to shipbuilder	Grand total payments to shipbuilder	Grand total recoverable overpayments to shipbuilder
			Net cost	Surplus materials	Total cost												
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
1st	177	Union	$22,412,491.57	$53,859.63	$22,466,351.20	$22,792,960.96	$326,609.76	$22,412,491.57	10%	$2,241,249.16	$2,268,000.00	$26,750.84	0.00	$1,980,242.43	$24,707,600.36	$27,041,203.39	$2,333,603.03
2nd	178	Harlan	9,757,562.79	34,452.84	9,792,015.63	9,803,700.22	11,684.59	9,757,562.79	10%	975,756.28	709,500.00	*266,256.28*	.00	113,610.02	10,767,771.91	10,686,810.24	*80,961.67*
3rd	179	Sparrows Pt	5,552,545.07	3,785.34	5,556,330.41	5,657,180.58	100,850.17	5,552,545.07	10%	555,254.51	539,998.90	*15,255.61*	.00	515,223.37	6,111,584.92	6,712,408.85	600,823.93
4th	182	Sparrows Pt	11,195,659.89	152,598.37	11,348,258.26	11,495,435.22	147,176.95	11,195,659.89	10%	1,119,565.99	800,000.00	*319,565.99*	.00	.00	12,467,824.25	12,295,435.22	*172,389.03*
5th	183	Fore River	5,287,865.43	19,965.44	5,307,830.87	5,368,867.81	61,036.94	5,287,865.43	10%	528,786.54	499,500.00	*29,286.54*	.00	402,056.25	5,816,617.41	6,270,424.06	453,806.65
Not in claim	184	Moore	6,086,293.48	54,225.65	6,140,519.13	6,543,048.69	402,529.56	6,086,293.48	10%	608,629.35	656,969.92	48,280.57	.00	470,053.70	6,749,148.48	7,670,012.31	920,863.83
6th	191	Union	6,345,388.74	3,869.37	6,349,258.11	6,405,743.11	56,483.00	6,345,388.74	10%	634,538.87	766,260.00	131,721.13	.00	1,100,000.00	6,983,796.98	8,272,001.11	1,288,204.13
7th	196	Sparrows Pt	1,123,782.08	.00	1,123,782.08	1,142,822.60	19,040.52	1,123,782.08	10%	112,378.21	115,400.56	3,022.35	.00	112,656.84	1,236,460.29	1,370,880.00	134,719.71
8th	226	Sparrows Pt	10,891,429.05	13,118.77	10,904,547.82	11,149,226.76	244,778.94	10,891,429.05	10%	1,089,142.91	1,057,500.00	*31,642.91*	.00	837,579.61	11,993,690.73	13,044,405.37	1,050,715.64
9th	230	Union	3,192,236.09	26,433.82	3,218,669.91	3,248,727.48	30,057.57	3,192,236.09	10%	319,223.61	373,500.00	54,276.39	.00	455,000.00	3,537,893.52	4,077,227.48	539,333.96
10th	299	Fore River	4,848,595.35	18,516.22	4,867,111.57	4,897,000.21	29,938.64	4,848,595.35	10%	484,859.54	499,500.00	14,640.46	.00	479,402.75	5,351,971.11	5,877,952.96	523,981.85
11th	300	Sparrows Pt	5,122,587.87	2,465.36	5,125,053.23	5,166,180.02	41,126.79	5,122,587.87	10%	512,258.79	540,000.00	27,741.21	00	667,660.53	5,637,312.02	6,373,840.55	736,528.53
12th	301	Union*	15,274,468.69	70,363.39	15,344,832.08	15,360,150.17	15,318.09	15,274,468.69	10%	1,527,446.87	1,694,250.00	166,803.13	.00	1,744,757.57	16,872,278.95	18,799,157.74	1,926,878.79
12th	301	Union**	699,746.46	.00	699,746.46	814,685.34	114,938.88	699,746.46	10%	69,974.65	26,604.85	*43,369.80*	.00	.00	769,721.11	841,290.19	71,569.08
Not in claim	312	Sparrows Pt.**	313,594.89	.00	313,594.89	392,387.49	78,792.60	313,594.89	10%	31,359.49	28,471.31	*2,888.18*	.00	.00	344,954.38	420,858.80	75,904.42
13th	313	Moore**	488,192.25	.00	488,192.25	431,564.19	*56,628.06*	488,192.25	10%	48,819.22	21,402.99	*27,416.23*	.00	.00	537,011.47	452,967.18	*84,044.29*
14th	314	Harlan	13,021,970.30	48,130.79	13,070,101.09	13,172,512.23	102,411.14	13,021,970.30	10%	1,302,197.03	1,038,577.35	*263,619.68*	.00	135,389.98	14,372,298.12	14,347,479.56	*24,818.56*
15th	310	Liberty**	375,000.00	.00	375,000.00	375,000.00	.00	375,000.00	7½%	28,125.00	.00	*28,125.00*	.00	.00	403,125.00	375,000.00	*28,125.00*
16th	465	Sparrows Pt.*	15,071,907.16	152,598.36	15,224,505.52	15,240,199.30	15,693.78	15,071,907.16	10%	1,507,190.72	864,000.00	*644,190.72*	.00	.00	16,731,695.24	16,104,199.30	*627,496.94*
16th	465	Sparrows Pt.**	2,888,648.70	.00	2,888,648.70	2,669,328.70	*219,320.00*	2,888,648.70	7.6923%	222,203.52	238,112.40	15,908.88	.00	.00	3,110,852.22	2,907,441.10	*203,411.12*
TOTALS			139,949,365.86	651,383.35	140,600,749.21	142,126,875.08	1,522,525.87	139,949,965.86		13,918,960.26	12,797,488.28	*1,121,471.98*	.00	9,014,633.05	154,523,309.47	153,938,996.41	9,415,686.94

*Completed ships. **Canceled ships.

NOTE.—Figures in *italics* represent underpayments to shipbuilder.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT AND COUNTERCLAIM OF THE DEFENDANT, BETHLEHEM STEEL COMPANY.

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its Solicitor, and for its reply to the claim for credit and counterclaim of the defendant, Bethlehem Steel Company, states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act 1928. Hereinafter in this reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Fifty-fourth of defendant's answer, claim for credit and counterclaim, complainant admits the averments therein contained.

Third. Replying to paragraph Fifty-fifth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about October 10, 1917, the defendant and the Fleet Corporation, acting as principal, entered into the contracts in writing referred to; and complainant further

denies that the Fleet Corporation, on its own behalf, made any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that a contract for the completion of said vessels was entered into between the defendant and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that the defendant agreed on final acceptance of each such vessels to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessels to the United States. The complainant avers that the contract entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the Fleet Corporation either in

its own behalf or as an agent of the United States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on the cost-plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contract was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contract and every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that defendant dealt with the Fleet Corporation as principal, but avers that defendant at all times dealt with the Fleet Corporation solely as an agent of the United States.

Fourth. Replying to paragraph Fifty-sixth of defendant's answer, claim for credit and counterclaim, complainant denies that the contract referred to was a contract between defendant and the Fleet Corporation, or that the Fleet Corporation, as principal, gave any approval to the completion of the vessels by the Bethlehem Shipbuilding Corporation, Ltd., but avers that such approval was given by the Fleet Corporation as agent of complainant; and avers that the contract referred to

was a contract between defendant and the United States of America represented by the Fleet Corporation.

Fifth: Replying to paragraph Fifty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth Inclusive of Complainant's Complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable overtime coefficient amounted the sums set forth in Column K of defendant's Exhibit 3, and avers that the sums set forth in said Column K are inconsistent with the sums stipulated and agreed to by both parties as correct and inconsistent with the sums set forth in Exhibit 2 attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation, No. 11970, in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen and the excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of Complainant to defendant on account of overtime bonus paid to workmen are correctly set forth in Column 6 of Exhibit A, hereto attached.

Sixth. Replying to paragraph Fifty-eighth of defendant's answer, claim for credit and counter-

claim, the complainant denies that the Fleet Corporation, as principal, entered into the agreement mentioned in said paragraph. Complainant avers that the defendant and the complainant, the United States of America acting through its agent, the Fleet Corporation, entered into an agreement by which the defendant should be reimbursed for certain payments made to foremen, assistant foremen, leading men, and other heads of departments in order to expedite the completion of the hulls mentioned in said paragraph. Complainant admits that the amount of such payments to which the defendant is entitled as a credit is correctly set forth in column L of Exhibit 1, attached to defendant's answer.

Seventh. Replying to paragraph Fifty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 1, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit A, hereto attached.

Eighth. Replying to paragraph Sixtieth of defendant's answer, claim for credit and counterclaim, the complainant denies that the $0.60 per deadweight ton provision therein referred to is

legally binding upon the complainant or its agent, the Fleet Corporation, in that it provides for excessive, unreasonable, and unconscionable profits for which there is no consideration, and for the further reason that the said provision was superseded by an agreement under which the complainant, acting through its agent, the Fleet Corporation, agreed with the defendant to reimburse, and did reimburse the defendant for the actual additional cost due to increases in wages rates over the base rates specified in the contract and defendant agreed to accept and did accept said reimbursement, and defendant is entitled to receive from complainant only such amount as represents the actual increase in wages paid by it over and above the amount of wages which would have been paid by it at the rates in force at the date of said contracts increased by 10 per cent, which increase amounts to the sums set forth in column 8, lines 16, 17, 20, and 21 of Exhibit A, hereto attached.

Ninth. Replying to paragraph Sixty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that there became due from the Fleet Corporation to the defendant on account of the matters alleged in said paragraph any sum whatever. Complainant admits that there became due from the complainant to the defendant credits equal to the amounts set forth in column N of Exhibit 1, attached to defendant's answer.

Tenth. Replying to paragraph Sixty-second of defendant's answer, claim for credit and counterclaim the complainant denies that the defendant and the Bethlehem Shipbuilding Corporation, Ltd.,

duly performed all the terms and conditions of all the contracts for said vessels in that defendant and the Bethlehem Shipbuilding Corporation, Ltd., did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of said vessels was completed in accordance with the orders of the Fleet Corporation as principal. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Eleventh. Replying to paragraph Sixty-third of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatever had become payable by it to the defendant or the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J, K, L, M, N, O, P, and Q of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the Bethlehem Shipbuilding Corporation, Ltd., on account of the con-

struction of said vessels are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Exhibit A, hereto attached.

Twelfth. Replying to paragraph Sixty-fourth of defendant's answer, claim for credit and counterclaim, complainant denies that the amounts paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and the Fleet Corporation, are as set forth in column R of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which were paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from the funds of the complainant are as set forth in column 13 of Exhibit A, hereto attached.

Thirteenth. Replying to paragraph Sixty-fifth of defendant's answer, claim for credit and counterclaim the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 1, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and complainant further avers that the amounts set forth in said column S of such Exhibit 1 do not correctly represent balances in the accounts between the complainant and the defendant and the Bethlehem Shipbuilding Corporation, Ltd. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as agent of the complainant, has largely overpaid

the Bethlehem Shipbuilding Corporation, Ltd., on account of requisitioned ships, from moneys of the claimant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit A, hereto attached.

Fourteenth. Replying to paragraph Seventy-first of defendant's answer, claim for credit and counterclaim, complainant repeats and reavers every averment and denial heretofore contained in paragraphs Second to Thirteenth, inclusive, of this reply with the same force and effect as if herein again averred or denied in full. Further replying to said paragraph, complainant denies that the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to any other or further credits on account of the transactions set forth in defendant's answer than those set forth in column 12 of Exhibit A, hereto attached. Complainant further avers that the credits herein admitted do not represent sums which the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to receive, but only represent credits which should be allowed against the payments made by the complainant to the defendant and to the Bethlehem Shipbuilding Corporation, Ltd., as shown in column 13 of Exhibit A, hereto attached.

Fifteenth. Replying to paragraph Seventy-second of defendant's answer, claim for credit and counterclaim, the complainant repeats and reavers the denials and averments contained in paragraphs Second to Thirteenth, inclusive, of this reply with the same force and effect as if herein again denied or averred in full. Complainant denies that there

is any sum whatever due and owing from the complainant or from the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and denies that either the defendant or the Bethlehem Shipbuilding Corporation, Ltd., should recover from the complainant the sum of $852,401.35 or any other sum whatever.

Special Reply and Defense to Defendant's Answer, Claim for Credit and Counterclaim

Sixteenth. Not waiving, but insisting upon the averments and denials contained in the foregoing reply, but in addition thereto and as a special reply the complainant avers that the defendant has not presented its claim for credit and counterclaim to the accounting officers of the Treasury of the United States in accordance with Section 951 of the Revised Statutes of the United States for their examination and the said accounting officers have neither allowed nor disallowed said claim in whole or in part, and defendant has not pleaded and it is not the fact that the defendant is in possession of vouchers not before in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury of the United States by absence from the United States or by any unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer, claim for credit and counterclaim.

Complainant having fully replied to all the averments contained in the answer, claim for credit and

counterclaim, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel, United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT OF THE DEFENDANT, FORE RIVER SHIPBUILDING CORPORATION.

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its Solicitor, and for its reply to the claim for credit of the defendant, Fore River Shipbuilding Corporation, states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act, 1928. Hereinafter in the reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Fifty-fourth of defendant's answer and claim for credit, complainant admits the averments therein contained.

Third. Replying to paragraph Fifty-fifth of defendant's answer and claim for credit, the complainant denies that on or about September 10, 1917, the defendant and the Fleet Corporation, acting as principal, entered into the contract in writing referred to; and complainant further denies that the Fleet Corporation, on its own behalf, made

any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that contracts for the completion of said vessels were entered into between the defendant and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that the defendant agreed on final acceptance of each such vessel to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessel to the United States. The complainant avers that the contracts entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the Fleet Corporation either in its own behalf or as an agent of the United

States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on a cost-plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contracts was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contracts and in every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that defendant dealt with the Fleet Corporation as principal, but avers that defendant at all times dealt with the Fleet Corporation solely as an agent of the United States.

Fourth. Replying to paragraph Fifty-sixth of defendant's answer and claim for credit, complainant denies that the contract referred to was a contract between defendant and the Fleet Corporation, or that the Fleet Corporation, as principal, gave any approval to the completion of the vessels by the Bethlehem Shipbuilding Corporation, Ltd., but avers that such approval was given by the Fleet Corporation as agent of complainant, and avers that the contract referred to was a contract between de-

fendant and the United States of America represented by the Fleet Corporation.

Fifth. Replying to paragraph Fifty-seventh of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation acted in any capacity except as agent of the complainant in entering into any of the agreements mentioned in said paragraph.

Sixth. Replying to paragraph Fifty-eighth of defendant's answer and claim for credit, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth, Inclusive, of Complainant's Complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable over time coefficient amounted to the sums set forth in Column K of defendant's Exhibit 3, and avers that the sums set forth in said Column K are inconsistent with the sums stipulated and agreed to by both parties as correct, and inconsistent with the sum set forth in Exhibit 2 attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation, No. 11970, in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen, and the excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of Complainant to defendant on account of overtime bonus paid to

workmen are correctly set forth in Column 6 of Exhibit A, hereto attached.

Seventh. Replying to paragraph Fifty-ninth of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 1, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit A, hereto attached.

Eighth. Replying to paragraph Sixtieth of defendant's answer and claim for credit, the complainant denies that there became due from the Fleet Corporation to the defendant on account of the matters alleged in said paragraph any sum whatever. Complainant admits that there became due from the complainant to the defendant credits equal to the amounts set forth in column N of Exhibit 1, attached to defendant's answer.

Ninth. Replying to paragraph Sixty-first of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation, as principal, gave any directions to the Bethlehem Shipbuilding Corporation, Ltd., whatever concerning rates of wages to be paid or made any agreements whatever to reimburse the Bethlehem Shipbuilding Corpora-

tion, Ltd., for the increased costs of labor incurred by the increases in wages, but avers that the directions and agreements referred to were made by the complainant acting through its agent, the Fleet Corporation. The complainant denies that the increased cost of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., in the construction of the hulls mentioned in said paragraph were as set forth in column M of Exhibit 1, attached to defendant's answer. Complainant avers that the increased costs of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., for the construction of the hulls mentioned in said paragraph are as set forth in column 8 of Exhibit A, hereto attached.

Tenth. Replying to paragraph Sixty-second of defendant's answer and claim for credit, the complainant denies that the defendant and the Bethlehem Shipbuilding Corporation, Ltd., duly performed all the terms and conditions of all the contracts for said vessels, in that defendant and the Bethlehem Shipbuilding Corporation, Ltd., did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of the said vessels were completed in accordance with the orders of the Fleet Corporation as principal. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Eleventh. Replying to paragraph Sixty-third of defendant's answer and claim for credit, the com-

plainant avers that said materials referred to were obtained for the Bethlehem Shipbuilding Corporation, Ltd., and the defendant by the Fleet Corporation, acting as an agent of the United States, and by Luckenbach, the former owner, from other contractors, the cost of which aggregates $233,600.00, which was paid by said Luckenbach and the complainant, acting through the Fleet Corporation, direct to such contractors. Complainant denies that the total actual cost of constructing hulls Nos. 297 and 298, determined in accordance with the provisions of such contracts, was $5,225,339.31, but avers that such cost was $4,934,702.16. Complainant denies that the said sum of $233,600.00 spent for materials by Luckenbach and by the complainant constituted any part of the cost of said hulls on which the defendant was entitled to profit.

Twelfth. Replying to paragraph Sixty-fourth of defendant's answer and claim for credit, complainant denies that the Bethlehem Shipbuilding Corporation, Ltd., purchased from the Fleet Corporation, as principal, any materials whatever. Complainant avers that the Bethlehem Shipbuilding Corporation, Ltd., purchased such materials in the sum of $32,196.42 from the complainant, and that the Bethlehem Shipbuilding Corporation, Ltd., agreed that for the purpose of determining profit payable to the Bethlehem Shipbuilding Corporation, Ltd., there should be deducted from the total cost of constructing the vessels the sum of $32,196.42. Complainant denies that the actual cost so reduced was the sum of $5,193,142.89, and avers that the said sum was $4,906,562.05, and no more, made up as follows:

Total cost of construction	$4,934,702.16
Plus unclaimed wages added for profit purposes only	4,063.91
Gross total	4,938,766.07
Deduct surplus materials	32,196.42
Total cost to bear profit	4,906,569.65

Thirteenth. Replying to paragraph Sixty-fifth of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatsoever had become payable by it to the defendant or the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J, K, L, M, N, O, P, and Q of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of said vessels are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Exhibit A, hereto attached.

Fourteenth. Replying to paragraph Sixty-sixth of defendant's answer and claim for credit, com-

plainant denies that the amounts paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and the Fleet Corporation are as set forth in column R of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which were paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from funds of the complainant are as set forth in column 13 of Exhibit A, hereto attached.

Fifteenth. Replying to paragraph Sixty-seventh of defendant's answer and claim for credit, the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 1, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and complainant further avers that the amounts set forth in said column S of such Exhibit 1 do not correctly represent balances in the accounts between the complainant and the defendant and the Bethlehem Shipbuilding Corporation, Ltd. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as agent of the complainant, has largely overpaid the Bethlehem Shipbuilding Corporation, Ltd., from moneys of the claimant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit A, hereto attached.

Sixteenth. Replying to paragraph Seventy-third of defendant's answer and claim for credit, com-

plainant repeats and reavers every averment and denial heretofore contained in paragraphs Second to Fifteenth, inclusive, of this reply with the same force and effect as if herein again averred or denied in full. Further replying to said paragraph complainant denies that the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to any other or further credits on account of the transactions set forth in defendant's answer than those set forth in column 12 of Exhibit A, hereto attached. Complainant further avers that the credits herein admitted do not represent sums which the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to receive, but only represents credits which should be allowed against the payments made by the complainant to the defendant and to the Bethlehem Shipbuilding Corporation, Ltd., as shown in column 13 of Exhibit A, hereto attached.

Special Reply and Defense to Defendant's Answer and Claim for Credit

Seventeenth. Not waiving, but insisting upon the averments and denials contained in the foregoing reply, but in addition thereto and as a special reply, the complainant avers that the defendant has not presented its claim for credit to the accounting officers of the Treasury of the United States in accordance with Section 951 of the Revised Statutes of the United States for their examination, and the said accounting officers have neither allowed or disallowed said claim in whole or in part, and defendant has not pleaded, and it is not the fact that the defendant is in possession of vouchers not be-

fore in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury of the United States by absence from the United States or by any unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer and claim for credit.

Complainant having fully replied to all the averments contained in the answer and claim for credit, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel,
United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel,
United States Shipping Board.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT AND COUNTERCLAIM OF THE DEFENDANT, UNION IRON WORKS COMPANY.

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its Solicitor, and for its reply to the claim for credit and counterclaim of the defendant, Union Iron Works Company, states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to the United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act, 1928. Hereinafter in this reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Fifty-fourth of defendant's answer, claim for credit and counterclaim, complainant admits the averments therein contained.

Third. Replying to paragraph Fifty-fifth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about September 20, 1917, the defendant and the Fleet Corporation, acting as principal, entered into the contracts in writing referred to; and complainant further de-

nies that the Fleet Corporation, on its own behalf, made any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that contracts for the completion of said vessels were entered into between the defendant and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that the defendant agreed on final acceptance of each such vessel to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessel to the United States. The complainant avers that the contracts entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation, and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the

Fleet Corporation either in its own behalf or as an agent of the United States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on a cost-plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contracts was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contracts and every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that defendant dealt with the Fleet Corporation as principal, but avers that defendant at all times dealt with the Fleet Corporation solely as an agent of the United States.

Fourth. Replying to paragraph Fifty-sixth of defendant's answer, claim for credit and counterclaim, complainant denies that the contracts referred to were contracts between defendant and the Fleet Corporation, or that the Fleet Corporation, as principal, gave any approval to the completion of the vessels by the Bethlehem Shipbuilding Corporation, Ltd., but avers that such approval was given by the Fleet Corporation, as agent of complainant; and avers that the contracts referred to

were contracts between defendant and the United States of America represented by the Fleet Corporation.

Fifth. Replying to paragraph Fifty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation acted in any capacity except as agent of the complainant in entering into any of the agreements mentioned in said paragraph. Complainant avers that the contracts for the construction of the hulls mentioned in said paragraph were changed and modified so that the Bethlehem Shipbuilding Corporation, Ltd., should be entitled to cost plus a profit of $10 per dead-weight ton on such vessels.

Sixth. Replying to paragraph Fifty-eighth of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth Inclusive of Complainant's Complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable overtime coefficient amounted to the sums set forth in Column K of defendant's Exhibit 3, and avers that the sums set forth in said Column K are inconsistent with the sums stipulated and agreed to by both parties as correct, and inconsistent with the sums set forth in Exhibit 2 attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation No. 11970 in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen, and the

excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of Complainant to defendant on account of overtime bonus paid to workmen are correctly set forth in Column 6 of Exhibit A, hereto attached.

Seventh. Replying to paragraph Fifty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 3, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit A, hereto attached.

Eighth. Replying to paragraph Sixtieth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about February 1, 1918, the Fleet Corporation, as principal or as agent of the complainant, directed the Bethlehem Shipbuilding Corporation, Ltd., to pay certain war-service payments as a part of the regular wages of its employees in addition to the wages provided by the Shipbuilding Labor Adjustment Board. Complainant avers that on or about December 10, 1917, the Fleet Corporation, as agent of the complainant,

notified the Bethlehem Shipbuilding Corporation, Ltd., that on February 1, 1918, the said 10 per cent increase would be effective as a regular permanent part of the wage schedule effective after that date. The complainant denies that the Fleet Corporation, as principal, agreed to reimburse the Bethlehem Shipbuilding Corporation, Ltd., for any of the payments averred in said paragraph, but admits that the Fleet Corporation, as agent of the complainant, agreed to reimburse the defendant for increases due to such awards of the Shipbuilding Labor Adjustment Board and orders given by the Fleet Corporation as agent of the complainant. Complainant denies that the increased costs of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., in the construction of the hulls mentioned in said paragraph were as set forth in column M of Exhibit 3, attached to defendant's answer. Complainant avers that the increased costs of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., for the construction of the hulls mentioned in said paragraph are as set forth in column 8 of Exhibit A, hereto attached.

Ninth. Replying to paragraph Sixty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant and the Bethlehem Shipbuilding Corporation, Ltd., duly performed all the terms and conditions of all the contracts for said vessels, in that defendant and the Bethlehem Shipbuilding Corporation, Ltd., did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of the said vessels were completed in accordance with the orders of the Fleet Corporation

as principal. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Tenth. Replying to paragraph Sixty-second of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatsoever had become payable by it to the defendant or the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J, K, L, M, N, O, P, and Q of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of said vessels, are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Exhibit A, hereto attached.

Eleventh. Replying to paragraph Sixty-third of defendant's answer, claim for credit and counterclaim, complainant denies that the amounts paid to the defendant and the Bethlehem Shipbuilding Cor-

poration, Ltd., by the former owners and the Fleet Corporation are as set forth in column R of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which were paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from the funds of the complainant are as set forth in lines 22 to 30, inclusive, column 13 of Exhibit A, hereto attached.

Twelfth. Replying to paragraph Sixty-fourth of defendant's answer, claim for credit and counterclaim, the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 3, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and complainant further avers that the amounts set forth in said column S of such Exhibit 3 do not correctly represent balances in the accounts between the complainant and the defendant and the Bethlehem Shipbuilding Corporation, Ltd. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as agent of the complainant, has largely overpaid the Bethlehem Shipbuilding Corporation, Ltd., from moneys of the claimant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit A, hereto attached.

Thirteenth. Replying to paragraph Seventieth of defendant's answer, claim for credit and counterclaim, complainant repeats and reavers every aver-

ment and denial heretofore contained in paragraphs Second to Twelfth hereof, inclusive, with the same force and effect as if herein again averred or denied in full. Further replying to said paragraph complainant denies that the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled, on account of the matters referred to in said paragraph, to any other or further credits than those set forth in column 12 of Exhibit A, hereto attached. Complainant further avers that the credits herein admitted do not represent sums which the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to receive, but only represents credits which should be allowed against the payments made by the complainant to the defendant and to the Bethlehem Shipbuilding Corporation, Ltd., as shown in column 13 of Exhibit A, hereto attached.

Fourteenth. Replying to paragraph Seventy-first of defendant's answer, claim for credit and counterclaim, complainant repeats and reavers the denials and averments contained in paragraphs Second to Twelfth, inclusive, of this reply with the same force and effect as if herein again denied or averred in full. Complainant denies that there is any sum whatever due and owing from the complainant or from the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and denies that either the defendant or the Bethlehem Shipbuilding Corporation, Ltd., should recover from the complainant the sum of $241,474.57, or any other sum whatever.

Special Reply and Defense to Defendant's Answer, Claim for Credit and Counterclaim

Sixteenth. Not waiving, but insisting upon the averments and denials contained in the foregoing reply, but in addition thereto, and as a special reply, the complainant avers that the defendant has not presented its claim for credit and counterclaim to the accounting officers of the Treasury of the United States in accordance with Section 951 of the Revised Statutes of the United States for their examination, and the said accounting officers have neither allowed or disallowed said claim in whole or in part, and defendant has not pleaded, and it is not the fact that the defendant is in possession of vouchers not before in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury of the United States by absence from the United States or by any unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer, claim for credit, and counterclaim.

Complainant having fully replied to all the averments contained in the answer, claim for credit, and counterclaim, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.

JOSEPH J. BROWN,
Special Assistant to the Attorney General.

JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel, United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board.

AGREEMENT AND ORDER OF REFERENCE

(Filed May 1st, 1928.)

Whereas by agreement of the parties certain actions at law pending in this Court as of December Sessions, 1925, Nos. 11970, 11972, 11974 and 11976, involving the same, or substantially the same issues of fact and of law as the issues involved in the above entitled proceeding, have been referred to Owen J. Roberts, Esq., as Referee

And whereas the parties desire that the issues of fact and of law in the above entitled proceeding may be referred to the said Owen J. Roberts, Esq., as Special Master, to the end that the entire controversy between the parties may be heard and determined in one proceeding,

It is accordingly hereby agreed, subject to the approval of the Court, between the parties herein, acting through their respective counsel:

1. That the above entitled case be referred to Owen J. Roberts, Esq., Attorney at Law, as special master to hear and determine the issues and report his findings of fact in the form of special findings and his conclusions of law to the Court for its action as hereinafter provided. The special master upon the trial before him of the issues herein shall rule on the admissibility of evidence offered and in all things pertaining to the trial of the case shall have the powers and perform the duties that would belong to the court upon a trial of the case before the Court.

2. The special master shall give to an attorney of record for each of the parties thirty days' previous notice of his intention to file his report on a day to be fixed by him, during which time said parties or their attorneys shall have access to said report and may file exceptions thereto with the special master, and it shall be the duty of the special master upon exceptions being filed to re-examine his report and amend the same if in his opinion such exceptions are well founded.

3. The report of the Special Master and any exceptions thereto filed with him, together with a transcript of the testimony and all exhibits introduced or offered before him showing his rulings on objections made thereto and any exceptions of the parties to his rulings shall be filed by the special master with the Clerk of the Court.

4. Upon the filing of the special master's report either party may move the Court to confirm and adopt the report or to alter or amend it and to confirm and adopt the same as so amended, or to reverse it or send it back to the special master for further proceedings before him. Upon the confirmation and adoption by the Court of the special master's report or of such report as altered or amended by the Court, decree may be entered thereupon as upon a decision of the case by the Court after trial before the Court.

5. At any time after the termination of the trial before the special master either party may move the Court to fix a time within which the special master's report must be filed, and if the report shall not be filed within the time so fixed, unless such time is further extended by the Court, the Court may on

motion of either party terminate the reference and thereupon the trial of the case shall be had before the Court unless the parties shall by stipulation in writing agree upon a new reference thereof.

6. In the event of death or disability of the special master prior to the filing of his report, or the failure of said master to qualify as such or to act herein, no new special master shall be appointed herein except upon the consent of the parties hereto.

UNITED STATES OF AMERICA

By HENRY P. BROWN,
JOSEPH J. BROWN,
Special Assistants to the Attorney General.
GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

BETHLEHEM STEEL CORPORATION, BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY and BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By CHARLES SINKLER,
RALPH B. EVANS,
Attorneys.

CRAVATH, DE GERSDORFF, SWAINE & WOOD,
Counsel.

ORDER OF REFERENCE

Before Thompson J.

And now, April 30th, 1928, in consideration of the foregoing stipulation, it appearing that the issues of fact and law in the above entitled proceedings are the same, or substantially the same, as the issues involved in certain other actions at law pending in this Court between the parties, which actions by agreement have been referred to Owen J. Roberts, Esq., as referee, and it appearing that the time of the Court and of the parties will be conserved by the appointment of a special master, it is accordingly ordered that the above entitled cause be, and the same is, hereby referred to Owen J. Roberts, Esq., as special master, to hear and determine the issues, and report thereon to the Court, in accordance with the foregoing stipulation, insofar as the same is in accordance with the United States Supreme Court Rules in Equity.

By the Court,

J. W. THOMPSON, *J.*

ORDER APPOINTING SUBSTITUTED MASTER

(Filed March 23, 1931.)

Before Dickinson, J.

And now, this 23rd day of March 1931, by consent of the parties, it is

Ordered that William Clarke Mason, Esquire, be appointed Special Master to succeed the Honorable Owen J. Roberts, with the same effect as if originally so named in the Order of Reference heretofore entered in the above entitled cause, either party to have the right to require that any or all of the testimony be taken de novo and to take additional testimony.

By the Court,

DICKINSON,
D. J.

FINAL DECREE

(Filed Dec. 12, 1938.)

This cause came on to be heard, and was argued by Counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz.

1. That the bill of complaint in this cause be, and it hereby is, dismissed; and

2. That the counterclaims alleged in the respective answers of the defendants Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company and Union Iron Works Company in this cause be, and they hereby are, dismissed for want of jurisdiction in this Court to give judgment against the complainant herein upon the matters alleged in said counterclaims.

Dated, December 12th, 1938.

By the Court,

(s) DICKINSON,
D. J.

(Seal)

PLAINTIFF'S NOTICE OF APPEAL

(Filed March 10, 1939.)

Notice is hereby given that The United States of America, the plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Third Circuit from that part of the judgment filed in this action on December 12, 1938, dismissing the Bill of Complaint in this cause.

March 10, 1939.

J. CULLEN GANEY,
United States Attorney for the Eastern District of Pennsylvania,
Attorney for The United States of America.
Office and Post Office Address:
Second and Chestnut Streets,
Philadelphia, Pennsylvania.

BON GEASLIN,
General Counsel, United States Maritime Commission,
Attorney for The United States of America.
Office and Post Office Address:
Commerce Building, Washington, D. C.

STATEMENT OF PLAINTIFF-APPELLANT UNITED STATES OF AMERICA OF THE POINTS ON WHICH IT INTENDS TO RELY ON ITS APPEAL FROM THE JUDGMENT

(Filed April 24, 1939.)

Pursuant to Rule 75 (g) of the Federal Rules of Civil Procedure, the statement of the Plaintiff-Appellant, United States of America, of the points on which it intends to rely, on its appeal from the judgment filed December 10, 1938, in the above-entitled cause is as follows:

(1) The District Court erred in dismissing the Bill of Complaint of the Plaintiff herein in the above-entitled cause No. 3315.

(2) The District Court erred in not entering judgment in favor of the Plaintiff herein for the relief prayed for in paragraphs numbered "First to Tenth" inclusive, on pages 35 to 37, inclusive, of its Bill of Complaint in the above entitled cause No. 3315 including but not limited to judgment that the court fix a reasonable and proper cost of construction of the vessels under the contracts in controversy and that defendant, Bethlehem Shipbuilding Corporation, Ltd., account to Plaintiff for all moneys of the United States paid to it in excess of such reasonable and proper cost of construction and pay to Plaintiff the excess over and above such reasonable and proper cost of construction.

(3) The District Court erred in not entering judgment for costs including at least one-half of the compensation of the Special Master, William Clarke Mason, Esq., allowed in the sum of $15,540., against the Defendant, Bethlehem Shipbuilding Corporation, Ltd.

(4) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were entered into as a result of the fraudulent representations and actions of the Defendants herein.

(5) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were entered into through constructive fraud on the part of the Defendants herein.

(6) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were unconscionable and unenforceable.

(7) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were entered into on the basis of a mistake of fact.

(8) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the Defendants herein failed to prove that they saved material, increased efficiency, or did anything extraordinary or unusual resulting in a benefit to the Plaintiff herein which they were required to do under the contracts in controversy in order to re-

cover profit under the half savings clause of the contracts in controversy.

(9) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, inasmuch as the evidence does not show that Defendants herein did anything under the half savings clause of the contracts in controversy in the above-entitled Cause No. 3315 which they were not required to do independently of that clause and particularly because Defendants herein failed to show any benefit accrued to the Plaintiff herein under the half savings clause, there was a failure of consideration for any payment under the half savings clause of the contracts in controversy.

(10) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 are against public policy and hence void.

(11) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the representatives of Plaintiff had no power to enter into the contracts in controversy in the above-entitled Cause No. 3315.

(12) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, Plaintiff had no power to enter into the contracts in controversy in the above-entitled Cause No. 3315.

Dated, April 24, 1939.

J. CULLEN GANEY,
BON GEASLIN,
Attorneys for Plaintiff-Appellant United States of America.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315—March Term—1925

United States of America

vs.

Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company

Henry P. Brown, Esq., George W. Coles, Esq., (for plaintiff).

Charles Sinkler, Esq., Ralph B. Evans, Esq., Evans, Bayard & Frick, Esqs., Richardson Dilworth, Esq., (for defendants).

DOCKET ENTRIES

Dec. 12, 1938, Final Decree dismissing bill of complaint and Counter-claims filed. 12/13/38—Noted and Notice mailed.

Dec. 22, 1938, Memorandum Opinion, Dickinson J., sur entry of judgments filed.

1939

Mar. 10, Plaintiff's notice of Appeal filed 3-11-39. Copy to Richardson Dilworth.

Mar. 10, Copy of Clerk's Notice to U. S. Circuit Court of Appeals filed.

Apr. 14, Order of Court extending time to file record on appeal to May 4, 1939 filed.

Apr. 24, Statement of Plaintiff-Appellant of points on which it intends to rely on its appeal filed.

April 24, Order of Court directing transmittal of original papers and exhibits to Court of Appeals filed 4-25-39 noted. Notice waived.

April 24, Stipulation of Counsel as to contents of record on Appeal in lieu of Cross designation by Plaintiff-Appellant filed.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315—March Term—1925

United States of America

vs.

Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company

REPORT OF OWEN J. ROBERTS, ESQ., DISQUALIFYING HIMSELF FROM ACTING AS REFEREE, FILED JULY 24, 1930.

Printed at page 511 hereof.

REPORT OF THE SPECIAL MASTER AND REFEREE, DATED AND FILED FEBRUARY 7, 1936, INCLUDING EXHIBITS A AND B THERETO AND THE APPENDIX THERETO CONTAINING REQUESTS OF THE PARTIES FOR FINDINGS AND RULINGS THEREON AND EXCEPTIONS OF THE PARTIES FILED WITH THE SPECIAL MASTER AND REFEREE.

Printed at page 515 hereof.

EXCEPTIONS OF THE UNITED STATES OF AMERICA AND UNITED STATES SHIPPING

BOARD EMERGENCY FLEET CORPORATION TO THE REPORT OF THE SPECIAL MASTER AND REFEREE, FILED FEBRUARY 25, 1936.

Printed at page 714 hereof.

OPINION OF OLIVER B. DICKINSON, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, UPON EXCEPTIONS FILED BY PLAINTIFF AND DEFENDANT TO THE REPORT OF THE SPECIAL MASTER AND REFEREE, FILED JUNE 3, 1938.

Printed at page 733 hereof.

OPINION OF JUDGE DICKINSON UPON PRAECIPE FOR JUDGMENT, DISALLOWING INTEREST TO PLAINTIFF ON THE JUDGMENT, FILED SEPTEMBER 23, 1938.

Printed at page 749 hereof.

OPINION OF JUDGE DICKINSON UPON MOTION FOR DECREE, ASSESSING COSTS AND THE COMPENSATION OF THE SPECIAL MASTER AND REFEREE AGAINST THE DEFENDANT, FILED DECEMBER 23, 1938.

Printed at page 752 hereof.

STIPULATION OF THE CONTENTS OF THE RECORD ON APPEAL.

Printed at page 774 hereof.

EVIDENCE TAKEN BEFORE WILLIAM CLARKE MASON, ESQ., PAGES 1 TO 1024, FILED APRIL 4, 1931 AND PAGES 606 TO 610, INCLUSIVE, OF THE EVIDENCE BEFORE OWEN J. ROBERTS, ESQ.

Printed at page 815 hereof.

EXHIBITS A, B, D, G-4, G-5, G-6, G-7, G-8, G-9, G-10, G-11, G-12, G-13, G-14, G-15, G-16, G-17, G-18, G-19, G-20, G-21, G-22, G-23, G-24, G-25, G-26, G-27, G-28, G-29, G-30, G-31, G-32, G-33, G-34, G-39, G-40, G-41, G-42, G-45, G-96, G-97, G-101, G-104, G-105, G-107, G-109, G-110, G-112, G-116, G-122, G-124, G-125, G-126, G-127, G-128, G-130, G-131, G-132, G-133, G-134, G-135, G-150, G-154, G-155, G-159, G-160, G-161, G-163, G-170, G-175, G-176, G-177, G-178, G-207, G-208, G-209, B-6, B-7, B-10, B-11, B-14, B-17, B-18, B-19, B-20, B-23, B-24, B-25, B-28, B-29, B-30, B-31, B-33.

Printed at pages 1642-1931 inclusive, hereof.

ORDER OF THE DISTRICT COURT FILED APRIL 1, 1939, PURSUANT TO RULE 75 (i) OF THE FEDERAL RULES OF CIVIL PROCEDURE THAT THE PAPERS AND EXHIBITS MENTIONED THEREIN ADMITTED IN EVIDENCE AT THE SECOND HEARING BE SENT TO THE APPELLATE COURT IN LIEU OF COPIES.

Printed at page 1932 hereof.

CERTIFICATE OF CLERK

United States of America,
Eastern District of Pennsylvania, ss:

I, George Brodbeck, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of so much of the pleas and proceedings: in the cases of Bethlehem Shipbuilding Corporation, Ltd. vs. United States Shipping Board Merchant Fleet Corporation, At Law, No. 11970 December Term, 1925, and United States of America vs. Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company, In Equity, No. 3315 March Term, 1925, as per stipulation of Counsel filed, a copy of which is hereto attached, the transcripts of records in the above entitled causes are to include

now remaining among the records of the said Court in my office.

In Testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Philadelphia, this 23rd day of May, A. D. 1939.

GEORGE BRODBECK,
Clerk.

By .....
Deputy Clerk.

(Seal)

7-1550

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 7045. October Term, 1939

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT, *vs.* BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., ET AL., DEFENDANTS-APPELLEES

No. 7046. OCTOBER TERM, 1939

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORP., DEFENDANT-APPELLANT, *vs.* BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLEE

And afterwards, to wit, the 16th day of January 1940, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Honorable Albert B. Maris, and Honorable William Clark, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 18th day of June 1940, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

In the United States Circuit Court of Appeals for the Third Circuit

No. 7045. October Term, 1939

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY, DEFENDANTS-APPELLEES

No. 7119. October Term, 1939

BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLANT

v.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, DEFENDANT-APPELLEE

and

No. 7046. October Term, 1939

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, DEFENDANT-APPELLANT

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLEE

Appeals From the District Court of the United States, for the Eastern District of Pennsylvania

Opinion

Filed June 18, 1940

Before BIGGS, MARIS, and CLARK, Circuit Judges.

MARIS, Circuit Judge.

In 1917 this country was at war. The war emergency made it necessary for the Government to take over all ships suitable for war purposes then under construction at the various shipyards throughout the United States and to arrange with shipbuilders for the construction of as many additional vessels as possible and to construct them with the utmost speed. In the fall of that year the United States Shipping Board Emergency Fleet Corporation (now known as United States Shipping Board Merchant Fleet

Corporation and herein referred to as the Fleet Corporation), an agency of the Government, entered into negotiations for the construction of ships by the Bethlehem Shipbuilding Corporation, Ltd. (hereinafter referred to as Bethlehem), a subsidiary of the Bethlehem Steel Corporation, having a number of shipyards and an experienced shipbuilding organization. In these negotiations Bethlehem was represented by two competent shipbuilders, Joseph W. Powell and Harry Brown, and the Fleet Corporation was represented by two equally competent shipbuilding experts, Admiral F. T. Bowles and G. S. Radford, who were advised by and had full opportunity to advise with Daniel H. Cox, a competent naval engineer and estimator, and Chester Cuthell, counsel for the Fleet Corporation. In addition to these representatives the interests of the Fleet Corporation were protected by Charles Piez, its vice president and general manager, who while not previously a shipbuilder was a nationally known business executive of long experience.

Three forms of contract were considered by the negotiators, a lump-sum" contract, a "cost-plus" contract and a "cost plus fixed fee" contract with a "bonus for savings." The representatives of the Fleet Corporation endeavored to get Bethlehem to bid on a lump sum basis but it refused, stating in a letter of December 13, 1917, that "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation."

On December 19, 1917, Admiral Bowles on behalf of the Fleet Corporation wrote Bethlehem requesting it to submit proposals for the construction of certain ships which he specified. Under the same date Bethlehem submitted a written proposal to construct these ships under the bonus for savings form of contract, setting forth in its proposal the estimated cost of the vessels and the fixed profit to be paid. This proposal was the subject of further conference on January 3, 1918, at which Admiral Bowles unsuccessfully tried to persuade Powell to accept lump-sum contracts but was finally persuaded to agree to accept the bonus for

savings form of contract in order to reach any agreement at all. On January 5, 1918, Admiral Bowles and Radford transmitted Bethlehem's proposal to Piez with the following memorandum:

"We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

"We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

"The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to with representatives of the Bethlehem Shipbuilding Corporation are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions."

Prior to the receipt of this memorandum from Admiral Bowles and Radford, Piez had received a letter from Powell in anticipation of the final conference with Admiral Bowles. In this letter Powell agreed on behalf of Bethlehem "to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager." On January 5, 1918, after receiving from Admiral Bowles and Radford Bethlehem's proposal and their accompanying memorandum reluctantly recommending its acceptance, Piez on behalf of the Fleet Corporation awarded to Bethlehem seven contracts for the construction of a total of 21 tankers, 8 cargo ships, and 20 tugs upon the terms set forth in Bethlehem's proposal. The contracts, which were dated December 31, 1917, were actually signed and delivered about February 1, 1918. Subsequently in March, April, and May six other contracts for the

construction of 19 tankers and 18 cargo ships were executed between the parties upon substantially similar terms. All 13 of these contracts are involved in the present controversy. Five other contracts were also executed, one of them on February 1, 1918, and the others later. With them, however, we are not now concerned.

The total estimated cost of the 86 vessels involved, as set out in the contracts, was $119,750,000.00. The actual base cost of the ships as built was $92,990,520.91 and Bethlehem has been paid under the contracts the actual base cost of the ships, $92,990,520.91, the cost of extras, $16,381,432.15, fixed profits specified in the contracts, $11,962,400.00, and bonus for savings to the amount of $8,093,156.60. It will be seen that the total bonus for savings payable under the terms of the contracts would exceed $13,000,000.00, but the Fleet Corporation after paying Bethlehem $8,093,156.60 on this account declined to pay any more. A sum in excess of $5,000,000.00 is accordingly claimed by Bethlehem to be still due it from the Fleet Corporation.

The controversy with regard to the bonus for savings resulted in the institution of two suits in the District Court for the Eastern District of Pennsylvania. One was a suit in equity brought by the United States against Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., and certain subsidiary corporations for an accounting and to recover sums paid to the defendants or some of them under the contracts above mentioned. The other was an action at law by Bethlehem against the Fleet Corporation to recover the balance of the bonus for savings claimed by Bethlehem under the contracts. A jury trial was waived in the law action and both suits were referred to a special master and referee for hearing. The special master and referee made findings of fact and conclusions of law and recommended the dismissal of the Government's bill in the equity case and the entry of judgment in the action at law for Bethlehem against the Fleet Corporation for $5,272,075.10, with interest from specified dates at the rate of 2% per annum. Exceptions having been filed, the district court upon consideration of the report of the special master and referee dismissed the bill in equity, entered judgment in the action at law for Bethlehem in the amount of $5,272,075.10, but without interest. The United States has appealed from the decree dismissing the bill in equity (No. 7045). From the judgment entered against it in the action at law the Fleet Corporation has appealed (No. 7046). Bethlehem has taken a cross-appeal in the action at law from the refusal of the district court to allow interest on the judgment entered in its favor (No. 7119).

In the pleadings and in the court below the chief contention of the Government was that Bethlehem was guilty of fraud in

the making of the ship construction contracts to which we have referred. Both the master and the court below held that the charge of fraud in the making of the contracts was without foundation. So far as fraud in the ordinary sense is concerned we think that the evidence fully supports these findings. The Government, however, contends in this court that Bethlehem, by misleading statements and by withholding information, induced the Fleet Corporation's representatives to believe that Bethlehem's estimates of the construction cost of the vessels in question were fair and reasonable, and that the Fleet Corporation's representatives relied upon Bethlehem's express and tacit representations, and relying thereon executed the contracts under consideration. Under the circumstances, argues the Government, there was a duty of full disclosure resting on Bethlehem so that not having made such disclosure it must be held guilty of fraud. We have carefully considered the record in the light of this contention and we are compelled to conclude that it is not sustained by the testimony, which in our judgment fully supports the findings of the master and the district court that at the time the contracts were negotiated conditions both as to labor, material, and transportation, were such that it was impossible to make an accurate estimate of cost, that the estimates submitted by Bethlehem and prepared for it by its representative Brown were fairly and honestly made and as accurate as could be expected under the uncertain conditions then prevailing, that they were not intended to represent close estimates of actual cost and that they were not so understood, accepted, or relied on by the representatives of the Fleet Corporation. On the other hand the evidence supports the finding of the special master that it was understood that Bethlehem intended these estimated cost figures to be sufficiently large to assure a bonus for savings at least large enough to offset all excess profits and war taxes which it might have to pay as a result of the contracts and that the estimated cost figures finally inserted in the contracts were arrived at by a process of barter and trade carried on by experienced and competent shipbuilders on both sides dealing at arm's length.

It is of course obvious that these negotiations took place in time of war when the need of the Government for ships was extremely urgent and the necessity of reaching an agr ement with Bethlehem, therefore, vital. It is equally clear that Bethlehem insisted upon assuring itself a margin of profit which in view of the necessities of the Government was so large as to indicate an attitude of commercial greed but little diluted with patriotic feeling. There is no doubt that this attitude on the part of Bethlehem was deeply resented by the Government representatives, but the latter were faced with the alternative of either agreeing to

Bethlehem's terms or taking possession of its shipyards and having the Government itself construct the vessels. We think the record clearly indicates that the Government representatives felt that the latter course could not have accomplished the shipbuilding program with the speed which was essential. It was Bethlehem's existing shipbuilding organization that was necessary to insure success to the program of the Fleet Corporation. Consequently the Government representatives, feeling as they did that Bethlehem's organization was necessary to their program, were obliged to accept the terms offered by Bethlehem. This they did with full knowledge, as we have said, that the estimated cost figures included in the contracts did not represent close approximations but were so prepared as to assure to Bethlehem substantial additional profits by way of the bonus for savings. It follows that while Bethlehem may be condemned for having taken advantage of the Nation's necessities to secure inordinate profits it cannot be charged with having misrepresented the facts to the Government's representatives.

The profits to which Bethlehem claims to be entitled amount to approximately 20% of the cost of the ships which it constructed. These profits are undoubtedly very large, especially when it is considered that Bethlehem took no risk, and it can hardly be denied that Bethlehem took advantage of the war emergency to drive a hard bargain with the Government. The Government contends that these profits are so exorbitant and unconscionable as to render the contracts unenforceable, at least to the extent of the bonuses for savings. Hume v. United States, 132 U. S. 406, is relied upon in support of this contention. It appears that in that case, apparently through an error in not substituting "hundredweight" for "pound" in a Government contract, the Government agreed to pay a price for certain supplies which was 35 times their highest and 100 times their lowest market value. The Supreme Court held that the contract was so extortionate and unconscionable on its face as to raise the presumption of fraud in its inception and denied recovery for more than the fair market value of the supplies. The court referred to the language of Lord Hardwicke in Earl of Chesterfield v. Janssen, 2 Ves. Sen. 125, 155, 28 Eng. Reprint 82, referring to fraud of this type: "2. It may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other; which are unequitable and unconscientious bargains; and of such even the common law has taken notice."

There is, however, evidence in the present case that the cost (including the bonus for savings) of the ships built by Bethlehem

was no more than many other ships built for the Government at that time on both lump-sums and cost-plus contracts. In the light of that evidence it can hardly be said that the Fleet Corporation was under any delusion when it made the contracts involved in this case. Consequently they cannot be held to be so unconscionable and extortionate as to be unenforceable under the rule of Earl of Chesterfield v. Janssen and Hume v. United States. It should in fairness be said that the profits derived by Bethlehem from these contracts have been considered only in relation to the actual cost of the ships. It must be recalled, as the special master pointed out in his report, "that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long-time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes, and other carrying charges. All of these, however, were charges incident to the standby service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government, to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it."

The Government strongly urges that Bethlehem has not performed the obligation upon which its right to the bonus for savings depends and hence is not entitled to the additional bonus which the district court has awarded to it but should be required to repay the bonus already paid it. Its argument is based upon the premise that the bonus for savings was limited in its application to savings resulting from increased efficiency. We think that the premise is without foundation in the record and the argument consequently falls. There is nothing in the contracts themselves to indicate that savings resulting from increased efficiency alone was intended to be compensated for. The evidence fully supports the master's finding that "Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency." It must be concluded that the contracts were entire and that the bonus for savings formed part of the consideration for Bethlehem's obligation to build the ships. The ships having been built, Bethlehem is entitled to the consideration agreed upon unless, as is urged by the Government, the provisions for a bonus for savings were against public policy and,

therefore, invalid and unenforceable. We do not so regard them.

On the contrary it appears to us that this form of contract was a desirable one from the standpoint of both the Government and the shipbuilder. It was preferable to a "lump-sum" contract since under the conditions of uncertainty then existing a lump-sum price would necessarily have to be determined upon a basis sufficiently high to protect the shipbuilder against all possible increases in cost. The form of contract here used was likewise preferable to an ordinary "cost-plus" contract since it provided an incentive to the shipbuilder both to keep down cost and to expedite the work. We agree with the Circuit Court of Appeals for the Sixth Circuit, which in Dayton Airplane Co. v. United States, 21 F. 2d 673, had a similar contract before it, that this form of contract was a proper one and not against public policy. and that the bonus for savings provision which formed part of the consideration for Bethlehem's agreement to build the ships may not, alone of all the provisions in the contract, be set aside as unenforceable and void. We need only add that the record contains some evidence tending to show that the savings resulted, in part at least, from increased efficiency.

One other point raised by the Fleet Corporation in its appeal in the action at law must be considered. The court below awarded the compensation of the referee as costs in that action alone. The Fleet Corporation argues that his compensation should have been divided between the action at law and the suit in equity. We think, however, that the disposition of this matter by the district court was within its discretionary power and that under the circumstances of this case an abuse of discretion has not been shown.

This brings us to the consideration of the appeal of Bethlehem from the action of the court in refusing to award it interest for any period prior to judgment upon its claim in the action at law. The determination of this question requires a consideration of the nature of Bethlehem's claim. Was it merely an action brought upon the contracts to recover the balance of the price stipulated in the contracts, as Bethlehem argues, or was it essentially an action to recover damages for a breach of the contracts, as the Fleet Corporation urges.

Each of the contracts provided in Article XIX that "On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said * * * [fixed sum] determined as hereinbefore provided shall become immediately due and payable."

Article XVII of each of the contracts provided that the actual cost of the vessels should be determined, inter alia, as follows:

"For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

"(a) * * *

"(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, * * *

"(c) A proper proportion of interest accrued within the taxable year on bonds or other debts * * * of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

"(d) * * *

"(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, * * *

"(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. * * *".

An audit was completed about September 1, 1922. Bethlehem argues that it was entitled to interest from the date of this audit. The record discloses, however, that the determination of a "proper proportion" of and a "reasonable allowance" for many of the items making up actual cost was in dispute between Bethlehem and the Fleet Corporation and that the audit did not and could not settle these disputes. Questions of propriety and reasonableness obviously cannot be determined by the mathematical computations of accountants, but, if they cannot be agreed upon by the parties involved, may only be settled by the exercise of the judicial function. It follows, we think, that Bethlehem's claim was neither certain nor capable of being made certain prior to its adjudication by the district court. Bethlehem's suit must, therefore, be classified as an action seeking the liquidation of damages for the breach of a contract rather than a suit brought upon a contract for a sum certain due thereunder.

The view which we take of the nature of the action renders it unnecessary for us to decide the interesting question as to whether the place of performance was Pennsylvania, in which state the checks in payment were to be received by Bethlehem, or the District of Columbia, where the checks were to be mailed by the Fleet Corporation. This is for the reason that under the law of both jurisdictions the allowance of interest prior to judgment was discretionary with the district court. The law of the District of Columbia upon this question is embodied in Section 8, Title 17 of the District of Columbia Code, which is in part as follows:

"8. Interest on judgments for damages.—In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only; but nothing herein shall forbid the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. * * *"

Likewise it is well settled in Pennsylvania that in an action to recover unascertained damages for a breach of contract the allowance of interest prior to judgment is discretionary. Williams v. Craig, 1 Dallas (Pa.) 313; Richards v. Citizens Nat. Gas Co., 130 Pa. 37, 18 A. 600; Crawford's Estate, 313 Pa. 127, 169 A. 438; McDermott v. McDermott, 130 Pa. Super. 127, 196 A. 889.

It will be seen that both jurisdictions are in line with the modern rule that the allowance of interest in a case such as this should be governed by equitable principles. Board of Comm'rs. v. United States, 306 U. S. 343, 352. This rule is well expressed in the Restatement of the Law of Contracts, § 337, as follows:

"If the parties have not by contract determined otherwise, simple interest at the statutory legal rate is recoverable as damages for breach of contract as follows:

"'(a) Where the defendant commits a breach of a contract to pay a definite sum of money, or to render a performance the value of which in money is stated in the contract or is ascertainable by mathematical calculation from a standard fixed in the contract or from established market prices of the subject matter, interest is allowed on the amount of the debt or money value from the time performance was due, after making all the deductions to which the defendant may be entitled.

"'(b) Where the contract that is broken is of a kind not specified in Clause (a), interest may be allowed in the discretion of the court, if justice requires it, on the amount that would have been just compensation if it had been paid when performance was due.'"

Under the circumstances of this case we are entirely clear that justice does not require the allowance of interest and that the district court properly exercised its discretion in refusing to make such an allowance.

The decree in the suit in equity and the judgment in the action at law are both affirmed.

A true Copy:
Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

In the United States Circuit Court of Appeals for the Third Circuit

No. 7045. October Term, 1939

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT *vs.* BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY, DEFENDANTS-APPELLEES

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed.

Philadelphia, June 18, 1940.

ALBERT B. MARIS,
Circuit Judge.

[Endorsements:] Order Affirming Decree Received & Filed June 18, 1940. William P. Rowland, Clerk.

No. 7046. Term, 1939

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, DEFENDANT-APPELLANT, *vs.* BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLEE

On appeal from the District Court of the United States for the Eastern District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Philadelphia, June 18, 1940.

ALBERT B. MARIS,
Circuit Judge.

[Endorsements:] Order Affirming Judgment Received & Filed June 18, 1940. William P. Rowland, Clerk.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania, Third Judicial Circuit, Set.*

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record, Volume III, and proceedings in this court in the cases of United States of America, plaintiff-appellant vs. Bethlehem Steel Corporation, et al., defendants-appellees, No. 7045; and United States Shipping Board Merchant Fleet Corporation, defendant-appellant vs. Bethlehem Shipbuilding Corporation, Ltd., plaintiff-appellee, No. 7046, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia this 5th day of July in the year of our Lord one thousand nine hundred and forty and of the Independence of the United States the one hundred and sixty-fifth.

[SEAL]

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1940

Supreme Court of the United States

No. 362. October Term, 1940.

Order allowing certiorari

Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stone, Mr. Justice Roberts, and Mr. Justice Murphy took no part in the consideration and decision of this application.

Supreme Court of the United States

No. 363. October Term, 1940.

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Filed October 14, 1940

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In the [illegible]

[illegible]

United States of America, petitioner,

v.

Bethlehem Steel Corporation, Bethlehem Shipbuilders Corporation, Ltd., Bethlehem Steel Company, [illegible] Corporation, United Iron Works Company.

United States Emergency Fleet Corporation, petitioner,

v.

Bethlehem Shipbuilding Corporation, Ltd.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY

No. ——

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the United States and the United States Shipping Board Merchant Fleet Corporation, prays that writs of certiorari be issued to review the judgments of the United States Circuit Court of Appeals for the Third Circuit entered in the above-entitled causes on June 18, 1940.

OPINIONS BELOW

The opinions of the United States District Court for the Eastern District of Pennsylvania (R. 733, 749, 752) are reported in part in 23 F. Supp. 676 and 26 F. Supp. 259. The opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 2323–2332) has not yet been reported.

JURISDICTION

The judgments of the United States Circuit Court of Appeals for the Third Circuit was entered on June 18, 1940 (R. 2333). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

During the World War, the Fleet Corporation entered into contracts with respondents for the construction of a number of ships. The contracts provided for the payment of the cost of constructing the ships, plus a fixed profit, plus a fee (known as a "bonus for savings") equal to one-half the amount by which the actual cost of the ships might be less than a stated estimate of cost. The estimated cost of all the vessels was about $120,000,000; the actual cost was about $93,000,000; respondents' profits under the contracts would be over $25,000,000. The questions are:

1. Whether the contracts are unconscionable because of the circumstances in which they were

negotiated and the aggregate profit which accrued to respondents.

2. Whether respondents are entitled to a "bonus for savings" in the absence of any proof that this provision of the contracts led to any reduction in cost.

3. Whether the "bonus for savings" provision, if it operates in the absence of any real reduction in cost, is invalid as opposed to public policy; and whether the execution of contracts containing this provision as so construed was within the authority of the Fleet Corporation officials.

STATEMENT

The proceedings.—These two cases involve substantially the same questions. One is a suit in equity brought by the United States against Bethlehem Steel Corporation and certain subsidiary companies for an accounting and the recovery of sums paid to the defendants, or some of them, without authority of law, under certain contracts to build ships for the United States, represented by the United States Shipping Board Emergency Fleet Corporation (herein called the "Fleet Corporation").[1] The other is an action at law brought against the Fleet Corporation by Bethlehem Ship-

[1] The name of the Fleet Corporation was subsequently changed to United States Shipping Board Merchant Fleet Corporation and the caption of the action at law appropriately changed (R. 746).

building Corporation, Ltd. (herein called "Bethlehem"), a wholly owned subsidiary of Bethlehem Steel Corporation (R. 525), to recover the sum of $7,691,400.14 claimed by Bethlehem under the aforesaid contracts, as unpaid "bonus for savings."

Trial by jury in the law case was waived (R. 509), and both cases were referred to a Special Master and Referee for hearing (R. 509, 513, 2306, 2309, 2310). The successor to the original Special Master and Referee, after making findings of fact and conclusions of law (R. 515–692), recommended the dismissal of the Government's bill in the equity suit, and of Bethlehem's counterclaims thereto; and in the law case recommended that judgment be entered for $5,272,075.10 in favor of Bethlehem against the Fleet Corporation (R. 560–566).

The District Court approved and confirmed the Master's report and findings, dismissed the bill in the equity suit and Bethlehem's counterclaim thereto (R. 2311), and in the law case entered judgment in the amount recommended by the Master (R. 760).[2] The Circuit Court of Appeals affirmed the judgments (R. 2333).

The facts.—In 1917 the war emergency required the United States to requisition all ships suitable

[2] Bethlehem claimed interest at six percent from specified dates; the Master recommended interest at two percent; and the District Court entered judgment without interest. In the law case, Bethlehem appealed on this issue to the Circuit Court of Appeals, which upheld the lower court's decision. (R. 563–566, 742–744, 749–751, 2330–2332.) This point is not involved in the present petition.

for war purposes which were then under construction, and to build as many vessels as possible in the shortest period of time (R. 539, 574–5). To attain these objectives, it was necessary to obtain the cooperation of and to place contracts with Bethlehem, the largest shipbuilding concern in the world (R. 539, 574). There was no feasible alternative to the awarding of contracts to Bethlehem (R. 539). These emergency needs were well known to Bethlehem and its agents (R. 575).

Late in 1917, negotiations were entered into between Bethlehem and the Fleet Corporation. Bethlehem was represented by two exceptionally competent shipbuilders, Powell and Brown. Charles Piez, vice-president and general manager of the Fleet Corporation, had exclusive authority to negotiate its contracts. The actual negotiations were conducted for the Fleet Corporation by Bowles and Radford, shipbuilding experts said by the Master to be as able as those of Bethlehem. (R. 527, 575–577.) Piez was a business executive of long experience but was without any shipbuilding experience (R. 527, 646). The Master found that the negotiations were conducted at arm's length (R. 529); he also found that Piez and Powell were "very close," and that Piez had "implicit confidence in Powell's integrity" and "was accustomed to look to him for information and assistance" in shipbuilding matters (R. 646).

At the time of the negotiations it was impracticable to estimate the cost of construction within

a reasonable percentage (R. 530). Yet Bethlehem was in a much better position to make an estimate than was the Fleet Corporation. Except for seven of the smaller cargo ships, all of the vessels covered by the contracts in controversy were Bethlehem's standard types of ships, being duplicates of or substantially similar to ships which had been recently constructed at its shipyards, and which were under construction at the time of the negotiations (R. 591–594). This experience gave Bethlehem a mass of cost data, so that at the time of the negotiations it was in a position to determine the cost of constructing similar ships in the past (R. 594–597, 613–614). It was contemplated that the efficiency of labor would be considerably increased by the fact that the ships to be built were of but few types and were similar to Bethlehem's standard types of ships (R. 608). The Fleet Corporation's position was wholly different. It was entirely without information as to costs except for the general experience of its negotiators (R. 618–623) and it presented no estimates of its own at any time (R. 644).

Throughout the course of these negotiations the Fleet Corporation made repeated but unsuccessful efforts to enter into "lump sum" contracts (R. 626–627). Bethlehem, however, insisted upon its "bonus-for-savings" form of contract, and would not undertake construction under any other type of contract (R. 627, 642–643, 738). These con-

tracts[3] provided that the price paid Bethlehem should be (1) the actual cost of construction, plus (2) a fixed profit, amounting to about 10 per cent of the estimated cost, plus (3) the "bonus for savings," equal to one-half of the amount by which the actual cost fell below the estimated cost (*e. g.*, R. 117–118; cf. R. 572). Under these contracts, then, Bethlehem took no risk of any loss and was assured a profit of about 10 per cent of the estimated cost; in addition it would receive 50 per cent of the amount by which the actual cost should be less than the estimated cost.

It was understood that Bethlehem's participation in the "savings" bonus was supposed to represent "consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing" (R. 638), although the negotiators understood that there might be additional factors which might result in "savings" (R. 636–637).

The estimates of cost, crucial in fixing the extent of Bethlehem's profits under these contracts, were prepared by Bethlehem alone (R. 643–644). The estimates as prepared by Brown were shown in these proceedings to have contained large allowances for (a) decrease in efficiency (R. 1856); (b)

[3] The vessels were constructed under 13 substantially identical contracts—Nos. S. C. 183, 184, 299, 314, 178, 196, 226, 300, 191, 230, 177, 301, 179 (R. 1966). Copies of these contracts may be found at R. 109–146, 158–258, 270–282, 2089–2114.

increase in freight rates and delivery cost (R. 1855); (c) increase in prices of materials (R. 611, 631); and (d) extraordinary contingencies (R. 1857).[4] The resulting figures Powell substantially increased prior to the Fleet Corporation negotiations, as he admitted, "for trading purposes" (R. 672). Yet Powell and Brown represented that, in "their best and mature judgment," the estimates submitted by Bethlehem were the lowest which would afford Bethlehem a reasonable opportunity to effect savings as a result of increased efficiency of management and labor (R. 639–640), that they were "fair and reasonable" (R. 643), and that they were about as accurate as could be arrived at in the circumstances (R. 644).

The bases upon which these estimates had been made up were not revealed to the Fleet Corporation (R. 672). The only break-down of the costs of the various types of ships offered on Bethlehem's behalf during the negotiations was represented to be "based upon a close study of the facts affecting cost" (R. 585), but the Master found it represented merely "an arbitrary division of the total cost estimates" and that it was "submitted for the purpose of lending a semblance of support to such estimates" (R. 641).

---

[4] The extent of these allowances is suggested by the fact that it was assumed that wage rates would increase by 29 percent, that there would be a 30 percent *decrease* in efficiency, that freight rates would increase by 42 percent, and that a flat 10 percent of the total cost should be added to cover contingencies (R. 1855–1857).

The Master, however, also found that the representatives of the Fleet Corporation had knowledge, or information available from which knowledge could have been obtained, by which they could judge of the reasonableness of the estimated base price for the ships (R. 538). He further found that "the estimated base costs used in the contracts represented reasonable estimates of probable cost" (R. 688) and that Bethlehem had been guilty of no fraud or misrepresentation during the negotiations (R. 556).

The representatives of the Fleet Corporation knew that the prices demanded by Bethlehem, even though less than those originally asked, were high and that Bethlehem hoped to make a substantial profit from the transaction (R. 529, 531). The prices finally set were the lowest which Bethlehem would agree to take and were accepted by the representatives of the Fleet Corporation as the best that could be obtained "under very difficult conditions" (R. 528, 646). It was felt that Bethlehem's organization was necessary to assure the success of the Fleet Corporation's shipbuilding program (R. 531, 539), and consequently the representatives of the Fleet Corporation entered into the contracts, although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its "pound of flesh" (R. 539).

Actual construction proved that the estimated cost was inordinately high. The total estimated cos ..ad been fixed at $119,750,000, while the actual

base cost turned out to be $92,990,520.91, a difference of $26,759,479.09 (R. 572). For this discrepancy between estimate and actuality Bethlehem offered neither justification nor explanation (R. 674). There is, as the Master found, "no evidence that the cost of construction of the respective tank and cargo ships in controversy was reduced as a result of the 'bonus-for-savings' provisions of the respective contracts" (R. 678).*

Bethlehem has already received the total cost (including the cost of "extras") and, in addition $11,962,400 as fixed profits and $8,093,156.60 as a bonus for savings, or total profits of $20,055,556.60 (R. 1642–1721). In these suits, more than $7,500,000 additional profits were asked for and judgment was awarded for $5,272,075.10. Bethlehem, which assumed no risk of loss, has thus been awarded profits amounting to $25,327,631.70, representing an average profit on the contracts of 27 percent of the actual base cost and 23 percent of the actual costs including extra work (R. 572; cf. R. 554). This figure does not take into account any profits made by Bethlehem Steel Company, an affiliate, on the sales to Bethlehem of substantial amounts of

* The statement of the Circuit Court of Appeals (R. 2330) that "the record contains some evidence tending to show that the savings resulted, in part at least, from increased efficiency" is directly contrary to this finding of the Master, approved by the District Court. The Court of Appeals does not indicate the nature or the extent of any such savings.

materials used in the construction of the vessels (R. 604).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Third Circuit erred:

1. In holding that the "bonus for savings" provisions required that the bonus be paid regardless of the existence of savings due to increased efficiency.

2. In failing to hold the "bonus for savings" provisions of the contracts, as those provisions were construed by it, invalid and unenforceable for want of consideration and failure of performance.

3. In failing to hold that there is no evidence that any savings resulted from increased efficiency or unusual effort due to the "bonus for savings" provisions.

4. In failing to hold that, as construed by it, and in the circumstances revealed by these cases, the "bonus for savings" provisions were unenforceable and invalid as contrary to public policy.

5. In failing to hold that, in the circumstances under which these contracts were executed, the profits made by Bethlehem were so inordinate and unconscionable as to bar recovery by respondents of any further profits, and to require respondents to account for excessive profits already received.

6. In failing to hold that, if the contracts are to be construed as the court below has construed them, and are enforceable as so construed, the officials of

the Fleet Corporation had no authority to enter into such contracts, and it was a breach of their fiduciary duty to do so.

7. In affirming the judgments of the District Court.

REASONS FOR GRANTING THE WRITS

Nothing less than a decision of this Court should be allowed to settle the doctrine that a court of equity is forced without flinching to apply the harshest rules of a free market, where the buyer need only choose among competing sellers, to transactions such as these. In times of national emergency the men charged with preparing the nation's defenses have no time for haggling with a contractor who refuses to perform his indispensable functions unless he be assured an exorbitant profit. The Government is now engaged in a program of military and naval armament comparable to or greater than that undertaken in 1917 and 1918.[6] It

[6] Public, No. 703, 76th Cong., 3d Sess., c. 508, approved July 2, 1940 (An Act to expedite the strengthening of the national defense); Public, No. 671, c. 440, approved June 28, 1940 (An Act to expedite the national defense); Public, No. 426, c. 44, approved March 5, 1940 (An Act to facilitate the procurement of aircraft for the national defense); Public, No. 635, c. 375, approved June 15, 1940 (An Act to authorize the construction or acquisition of naval aircraft); Public, No. 664, c. 427, approved June 25, 1940 (An Act to amend the Reconstruction Finance Corporation Act, etc.); Public, No. 629, c. 364, approved June 14, 1940 (An Act to establish the composition of the United States Navy, to authorize the construction of certain naval vessels, etc.); Public Res. No. 83, c. 365, approved June 15, 1940 (To authorize assistance

is therefore, of immediate national concern that there should be an authoritative determination of the extent to which the country's need should place the Government at the mercy of its contractors.

1. Both of the courts below, although rejecting the charges of actual fraud and misrepresentation, clearly recognized that Bethlehem had deliberately insisted upon the "bonus-for-savings" clause and upon the swollen estimates finally adopted, that the Government had no choice but to accept, and that the profits made were extraordinary. The District Court stigmatized Bethlehem as adopting a "take it or leave it" attitude, and thought its actions constituted "daylight robbery"; it found an

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to the governments of American republics to increase their military and naval establishments); Public, No. 588, c. 313, approved June 11, 1940 (Navy Department Appropriation Act, 1941); Public, No. 611, c. 343, approved June 13, 1940 (Military Appropriation Act, 1941); Public, No. 667, c. 430, approved June 26, 1940 (First Supplemental National Defense Appropriation Act, 1941); Public, No. 656, c. 419, approved June 25, 1940 (Revenue Act of 1940, to provide for the expenses of national preparedness).

See also Proclamation by the President, of September 8, 1939, proclaiming a national emergency in connection with the observances, safeguarding, and enforcement of neutrality and the strengthening of the national defense, 4 Fed. Reg. 3851; Executive Order setting up the Office for Emergency Management in the Executive Offices, 5 Fed. Reg. 2109; the Rules and Regulations of the revived Council on National Defense, 5 Fed. Reg. 2114; the establishment of an Advisory Commission to the Council, 5 Fed. Reg. 2114, 2381; the establishment of a National Defense Research Committee, and of a Coordinator of National Defense Purchases, 5 Fed. Reg. 2446.

analogy in "the famous Rob Roy distinction who admitted he was a robber but proudly proclaimed that he was no thief" (R. 738; see also R. 736, 741). In the view of the Circuit Court of Appeals, Bethlehem's insistence upon the extraordinary margin of profit it obtained indicated "an attitude of commercial greed but little diluted with patriotic feeling" (R. 2327); the court observed that "it can hardly be denied that Bethlehem took advantage of the war emergency to drive a hard bargain," and that "Bethlehem may be condemned for having taken advantage of the Nation's necessities to secure inordinate profits" (R. 2328). Both courts agreed that the Fleet Corporation had no real freedom to reject Bethlehem's harsh terms (R. 738, 741, 2328).

Nevertheless, both courts refused to hold the results of enforcing the contracts unconscionable. The Circuit Court of Appeals felt that since the Fleet Corporation was aware how large Bethlehem's estimates were, the contracts could not be held so extortionate as to be unenforceable. But there is no evidence in the record that the Fleet Corporation's officials had any inkling of the extent to which Bethlehem's estimates were inflated or of the exorbitant profits which respondents would make. In any case the criterion is not the extent of the delusion but rather the grossness of the extortion. We cannot agree that the law sanctions, as obtained in good conscience, profits amounting

to more than 27 per cent of the cost of constructing the vessels under the contracts, when those profits were secured without the slightest risk of loss, provided an assured gain of about ten per cent of the estimated cost, and were coerced by the threat of withholding an essential service from the Government in wartime.

The courts have long since fashioned qualifications to the ordinary rules of contract law which are embodied in the familiar principles of duress, incapacity, and unjust enrichment. Those principles have full application to circumstances such as these, either within the technical confines of textbook law or as illustrative of the more basic principle that, when the bargain was not freely made by one with an option to refuse, a court will enforce the contract according to its justice and not according to its terms.

This Court has held, in *Hume* v. *United States*, 132 U. S. 406, that a contract may not be enforced against the Government, even in the absence of actual fraud, when the price demanded is unconscionable. And in *Burke & James, Inc.* v. *United States*, 63 C. Cls. 36, the court refused to enforce a wartime "bonus-for-savings" contract which, like those of respondents, resulted in inordinate profits to the contractor.

The Master and the Circuit Court of Appeals each emphasized that similar excessive profits were made on other contracts (R. 546–551, 2328–2329).

This comparison of excessive profits is misleading and incomplete.* But, in any event, we do not understand that unconscionable profits become acceptable to a court of equity because the necessities of the Government led to repeated instead of sporadic extortion.

2. Even if the contracts were not unconscionable, respondents have wholly failed in the promised performance which was the consideration for which the United States bargained in agreeing to the "bonus for savings" provision. The clause should, as a matter of law, be interpreted to award a bonus only if savings beneficial to the United States are actually made. The purpose of the provision could

*The Master relied on six war contracts (apparently later contracts with Bethlehem) and three peacetime contracts where comparable or greater profits had been received (R. 549–551, 554). He did not specify whether these contracts were lump-sum contracts, involving a risk of loss, or cost-plus or "bonus-for-savings" contracts. The record, on the other hand, shows that 10 percent of the actual cost was considered a reasonable profit in wartime (R. 654–656). Indeed, Mr. Schwab, as Director-General of the Fleet Corporation, forced another shipbuilding concern to modify existing contracts so that no profit of more than 10 percent could be earned (R. 660–662); this, he hoped, would "prove an object lesson to any other contractors who think that they can take advantage of us to obtain excessive prices for ships" (R. 662). And, at about the same time the contracts in question were negotiated, Bethlehem agreed with the Fleet Corporation to construct two troop ships on a cost-plus basis for a profit of 10 percent of actual cost (R. 654–655). Bethlehem's fixed fees alone, under the contracts here involved, were appreciably in excess of 10 percent of actual cost (R. 572).

not have been, as the District Court thought, "an agreement to pay something for nothing" (R. 741), or to reward the respondents for their inability to estimate construction costs accurately, or to supply an incentive to inflate the cost estimates. The obvious intention was to spur respondents to the extra effort and increased efficiency necessary to reduce the cost of the vessels below the figure which a "cost plus" contract would attain.[8] In fact, however, the difference between the estimated cost of construction and the actual cost did not result from Bethlehem's increasing its efficiency (R. 678). Respondents, having thus failed in their performance, are entitled neither to receive any further bonus nor to retain the bonus already paid.

The decision below, rejecting these views, is in direct conflict with the decision of the Court of Claims in *Burke & James, Inc.*, v. *United States*, 63 C. Cls. 36, which held that the "bonus-for-savings" provisions in war contracts are severable as a matter of law, and that the bonus is payable only in the event of savings realized through substantially increased efficiency.[9] *J. J. Preis & Co.* v.

[8] This was the real understanding of the parties, as may be gathered from the subsidiary findings of the Master (R. 636, 638, 639, 640), which his ultimate finding ignores (R. 637). Cf. *United States* v. *Esnault-Pelterie*, 303 U. S. 26, 31: The conclusion follows as well as from the testimony of respondents' own agent (R. 1368–69, 1434–36).

[9] There can be no question of minimizing the conflict of decisions on the basis of *Erie R. R. Co.* v. *Tompkins*, 304 U. S. 64, for the interpretation of federal contracts is a matter of

United States, 58 C. Cls. 81, points to the same conclusion. Compare *Cohen, Endel & Co.* v. *United States*, 60 C. Cls. 513; *F. Jacobson & Sons* v. *United States*, 61 C. Cls. 420.

3. If the contracts are to be construed as allowing a bonus for savings when in fact there are no real savings, the "bonus-for-savings" provisions in Government contracts are opposed to public policy. If so construed, their purpose can only be to pay an unnecessary and illegal gratuity, or to camouflage such unconscionable profits as those made by respondents here. In either case, the purpose is not one which the courts will countenance. *Hume* v. *United States, supra; J. J. Preis & Co.* v. *United States, supra; Burke & James, Inc.*, v. *United States, supra.* And Government officials cannot consistently with their authority and their fiduciary duties commit their principal to such agreements.

CONCLUSION

It is respectfully submitted that, for the reasons stated, this petition for writs of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

AUGUST 1940.

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federal law. Cf. *Board of Commissioners* v. *United States*, 308 U. S. 343; *United States* v. *National Surety Corp.*, 309 U. S. 165, 169. There is, in any event, no articulated or independent state law on the questions.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 362

UNITED STATES OF AMERICA, PETITIONER

v.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY

No. 363

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AND THE UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION

OPINIONS BELOW

The opinions of the District Court of the United States for the Eastern District of Pennsylvania

(R. 733, 749, 752) are reported in part in 23 F. Supp. 676 and 26 F. Supp. 259. The opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 2323-2332) is reported in 113 F. (2d) 301.

JURISDICTION

The judgments of the United States Circuit Court of Appeals for the Third Circuit were entered on June 18, 1940 (R. 2333). This Court granted the petition for writs of certiorari on October 14, 1940. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

During the World War, the Fleet Corporation entered into contracts with respondents for the construction of a number of ships. The contracts provided for the payment of the cost of constructing the ships, plus a fixed profit, plus a fee (known as a "bonus for savings") equal to one-half the amount by which the actual cost of the ships might be less than a stated estimate of cost. The estimated base cost of all the vessels was about $120,000,000; the actual base cost was about $93,000,000; respondents' profits under the contracts would be almost $24,000,000, about $12,000,000 of which is its claimed share of the bonus for savings. The questions are:

1. Whether respondents are entitled to a "bonus for savings" in the absence of any proof that this

provision of the contracts led to any reduction in cost.

2. Whether the "bonus for savings" provision, if it operates in the absence of any real reduction in cost, is invalid as opposed to public policy; and whether the execution of contracts containing this provision as so construed was within the authority of the Fleet Corporation officials.

3. Whether the contracts as so construed are unconscionable because of the circumstances in which they were negotiated and the aggregate profit which accrued to respondents.

STATEMENT

The proceedings.—These two cases involve substantially the same questions. One is a suit in equity brought by the United States against Bethlehem Steel Corporation and certain subsidiary companies for an accounting and the recovery of sums paid to the defendants, or some of them, without authority of law, under certain contracts to build ships for the United States, represented by the United States Shipping Board Emergency Fleet Corporation (herein called the "Fleet Corporation").[1] The other is an action at law brought against the Fleet Corporation by Bethlehem Shipbuilding Corporation, Ltd. (herein called "Bethle-

[1] The name of the Fleet Corporation was subsequently changed to United States Shipping Board Merchant Fleet Corporation and the caption of the action at law appropriately changed (R. 746).

hem"), a wholly owned subsidiary of Bethlehem Steel Corporation (R. 525), to recover the sum of $7,691,400.14 claimed by Bethlehem under the aforesaid contracts, as unpaid "bonus for savings."

Trial by jury in the law case was waived (R. 509), and both cases were referred to a Special Master and Referee for hearing (R. 509, 513, 2306, 2309, 2310). The successor to the original Special Master and Referee, after making findings of fact and conclusions of law (R. 515–692), recommended the dismissal of the Government's bill in the equity suit, and of Bethlehem's counterclaims thereto; and in the law case recommended that judgment be entered for $5,272,075.10 in favor of Bethlehem against the Fleet Corporation (R. 560–566).

The District Court approved and confirmed the Master's report and findings, dismissed the bill in the equity suit and Bethlehem's counterclaim thereto (R. 2311), and in the law case entered judgment in the amount recommended by the Master (R. 760).[2] The Circuit Court of Appeals affirmed the judgments (R. 2333).

The facts.—In 1917 the war emergency required the United States to requisition all ships suitable

[2] Bethlehem claimed interest at six percent from specified dates; the Master recommended interest at two percent; and the District Court entered judgment without interest. In the law case, Bethlehem appealed on this issue to the Circuit Court of Appeals, which upheld the lower court's decision. (R. 563–566, 742–744, 749–751, 2330–2332.) This point is not involved here.

for war purposes which were then under construction, and to build as many vessels as possible in the shortest period of time (R. 539, 574–575). To attain these objectives, it was necessary to obtain the cooperation of and to place contracts with Bethlehem, the largest shipbuilding concern in the world (R. 539, 574). There was no feasible alternative to the awarding of contracts to Bethlehem (R. 539). These emergency needs were well known to Bethlehem and its agents (R. 575, 1362).

Between February 1, 1918, and July 15, 1918, the Fleet Corporation entered into eighteen contracts with Bethlehem for the construction of a large number of vessels (R. 520, 109–307). Of the thirteen contracts in controversy, seven were awarded on January 5, 1918, and executed on February 1, 1918 (R. 520, 1921, 1966),[3] after negotiations begun in December of the preceding year (R. 527, 578). Bethlehem was represented in the negotiations by two exceptionally competent shipbuilders, Powell and Brown; Powell was vice president and operating manager of Bethlehem, and Brown was technical manager of Bethlehem. Charles Piez, vice president and general manager of the Fleet Corporation, had exclusive authority to negotiate its contracts. The actual negotiations were conducted for the Fleet Corporation by Bowles and

[3] These contracts are Nos. 177, 178, 179, 183, 184, 191, 196, copies of which are set forth at R. 109–146, 158–196, 2089–2114.

Radford, shipbuilding experts said by the Master to be as able as those of Bethlehem (R. 527, 575–577). Piez, was a business executive of long experience but was without any shipbuilding experience (R. 527, 646). The Master found that the negotiations were conducted at arm's length (R. 527); he also found that Piez and Powell were "very close," and that Piez had "implicit confidence in Powell's integrity" and "was accustomed to look to him for information and assistance" in shipbuilding matters (R. 646).

Throughout the course of these negotiations the Fleet Corporation made repeated but unsuccessful efforts to enter into "lump sum" contracts (R. 626–627, 643). Bethlehem, however, insisted upon its "bonus-for-savings" form of contract, which Powell had originated, and would not undertake construction under any other type of contract (R. 627, 642–643, 738). These contracts provided that the price paid Bethlehem should be (1) the actual cost of construction, plus (2) a fixed profit, amounting to about 10 percent of the estimated base cost, plus (3) the "bonus for savings," equal to one-half of the amount by which the actual cost fell below the estimated base cost (*e. g.*, R. 117–118; cf. R. 572). Under these contracts, then, Bethlehem took no risk of any loss and was assured a profit of about 10 percent of the estimated cost; in addition it would receive 50 percent of the amount by which the actual cost should be less than the estimated base cost.

It was understood, as the Master found, that Bethlehem's participation in the "savings" bonus was supposed to represent "consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing" (R. 638). The Master, however, made a further and, as we show below, inconsistent finding that Bethlehem was to participate in savings "however earned" (R. 637).

The estimates of base cost, crucial in fixing the extent of Bethlehem's profits under these contracts, were prepared by Bethlehem alone (R. 643–644). The estimates as prepared by Brown were shown in these proceedings to have contained large allowances for (a) decrease in efficiency (R. 1856); (b) increase in freight rates and delivery cost (R. 1855); (c) increase in prices of materials (R. 611, 631); and (d) extraordinary contingencies (R. 1857). The extent of these allowances is suggested by the fact that it was assumed that wage rates would increase by 29 percent, that there would be a 30-percent decrease in efficiency of labor, that freight rates would increase by 42 percent, and that a flat 10 percent of the total cost should be added to cover contingencies (R. 1855–1857). The allowance for a rise in material price was admittedly excessive (R. 1047, 1252, 1268, 1548); the overhead items were figured as a percent of the markedly increased labor costs, and even on that basis made virtually no allowance for capacity operation (R. 855, 1051–1053). The resulting figures Powell substantially increased prior to the

Fleet Corporation negotiations, as he admitted, "for trading purposes" (R. 672).

In accordance with his fixed determination, made in advance of the negotiations, Powell refused to go below Brown's estimates (R. 528, 642, 1090, 1377) and the contracts were executed substantially on this basis (R. 686). Bethlehem insisted that because of the "unprecedented conditions surrounding the labor and material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction" (R. 627) and that the estimates finally incorporated in the agreements were the lowest which would afford Bethlehem a reasonable opportunity to effect savings as a result of increased efficiency of management and labor (R. 639–640).

The basis upon which these estimates had been made up was not revealed to the Fleet Corporation (R. 672). The only break-down of the costs of the various types of ships offered on Bethlehem's behalf during the negotiations was represented to be "based upon a close study of the facts affecting cost" (R. 585), but the Master found it represented merely "an arbitrary division of the total cost estimates" and that it was "submitted for the purpose of lending a semblance of support to such estimates" (R. 641). While the Master found that the representatives of the Fleet Corporation had knowledge, or information available from which knowledge could have been obtained, by which they could judge of the reasonableness of the estimated base price for the ships (R. 538), this information

consisted solely of the prices which it paid other shipbuilders in a very limited number of contracts previously executed, particularly "lump sum" contracts of a very different nature from those in controversy (R. 688, 1619–1620, 1507–1508, 1407–1408; see *infra*, pp. 61–62). The representatives of the Fleet Corporation at no time presented any estimates of their own (R. 644).

The Master found that it was impracticable to estimate the cost of construction within a reasonable percentage at the time of the negotiations (R. 530), that Brown's estimates were as accurate as could be expected under such circumstances (R. 683) and that Bethlehem had been guilty of no fraud or misrepresentation during the negotiations (R. 689). Bethlehem, however, was in a much better position to judge the reasonableness of the estimates than was the Fleet Corporation. Except for seven of the smaller cargo ships, all of the vessels covered by the contracts in controversy were Bethlehem's standard types of ships, being duplicates of or substantially similar to ships which had been recently constructed at its shipyards, or which were under construction at the time of the negotiations (R. 591–594). This experience gave Bethlehem a mass of cost data, so that at the time of the negotiations it was in a position to determine the cost of constructing similar ships in the past (R. 594–597, 613–614). It was contemplated that the efficiency of labor would be considerably increased by the fact that the ships to be built were of but few types and were similar to Bethlehem's standard

types of ships (R. 608). The Fleet Corporation's position was wholly different. It was entirely without information as to Bethlehem's costs (R. 620–621) and, while the Master thought it "fair to assume" that "equivalent costs" were available, the Fleet Corporation's only information related to prices paid other shipbuilders in a few other contracts of a different character (R. 1619–1620, 1507–1508).

The representatives of the Fleet Corporation were convinced that the terms demanded by Bethlehem were harsh, and that Bethlehem hoped to make a substantial profit from the transaction (R. 529, 531). The terms were accepted by the representatives of the Fleet Corporation only because they were the best that could be obtained "under very difficult conditions" (R. 531, 646). While the Government could in theory have taken possession of the Bethlehem plant, it was felt that Bethlehem's organization was necessary to assure the success of the Fleet Corporation's shipbuilding program (R. 531, 539). Since the Government could not compel performance by an "unwilling organization" (R. 539), the representatives of the Fleet Corporation entered into the contracts, although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its "pound of flesh" (R. 539). The Master and both courts below agreed that the Fleet Corporation had no real freedom to reject Bethlehem's harsh terms (R. 539, 738, 741, 2328).

The remaining six contracts in controversy[4] executed after February 1, 1918, embodied substantially the same terms as the earlier agreements. At the time these contracts were entered into, the Fleet Corporation was able to compare the estimates of base cost in Bethlehem's offers with the cost to the Government of vessels constructed by other shipbuilders (R. 554), but had no knowledge of the basis of Bethlehem's estimates or its costs (R. 618–623). In the case of four of these contracts, the Government agreed to the same fixed fees as in the earlier agreements, but proposed a slight reduction of the estimated cost which would result in all but one case in a fixed fee of exactly 10% of such cost (R. 1836, 1839, cf. R. 130–131, 143; 1844, 1848, cf. R. 166–167; R. 1845, 1848, cf. R. 205–206; R. 1845–1846, 1848, cf. R. 118, 218). In the case of another contract, involving a new type of vessel, the Fleet Corporation proposed a reduction in both the estimated base cost and the fixed fee where, as respondents suggested in the court below (Br. pp. 53–54), Powell again had apparently added an arbitrary sum to Brown's estimate (R. 1844–1845, 1849–1850). In another, Bethlehem agreed to split the difference between its proposal and that of the Fleet Corporation (R. 1834, 1840, 1841, 1847, cf. R. 179–180). In all cases, the Fleet Corporation's proposals were made in response to Bethlehem's offer

[4] Contract Nos. 226, 230, 299, 300, 301, 314 (R. 197–258, 270–282).

and were subject to the acceptance or rejection of Bethlehem (R. 1839–1840, 1849, 1851). Bethlehem refused to make substantial reductions when suggested by the Fleet Corporation (R. 649–651, 652–653, 1838, 1841). The conclusion of the Master and the courts below that the Fleet Corporation had no real freedom of choice fully applies to these agreements as well as to the earlier ones (R. 539, 738, 741, 2328).

Actual construction proved that the estimated cost was inordinately high. The total estimated cost had been fixed at $119,750,000 while the actual base cost turned out to be $92,990,520.91, a difference of $26,759,479.09 (R. 572). For this discrepancy between estimate and actuality Bethlehem offered no justification (R. 674). There is, as the Master found, "no evidence that the cost of construction of the respective tank and cargo ships in controversy was reduced as a result of the 'bonus-for-savings' provisions of the respective contracts" (R. 678).[5]

Bethlehem has already received the total cost (including the additions due to wage increases and

[5] The statement of the Circuit Court of Appeals (R. 2330) that "the record contains some evidence tending to show that the savings resulted, in part at least, from increased efficiency" is not in conflict with the Master's finding. The Court of Appeals does not indicate the nature or the extent of any such savings, and, as we show below, it affirmatively appears that an increase in efficiency occurred only in labor costs and that all the increase in efficiency of labor occurred after the Armistice, due to the restoration of peacetime conditions, and was wholly unrelated to Bethlehem's own efforts.

extra work) and, in addition $11,962,400 as fixed profits and $8,093,156.60 as a bonus for savings, or total profits of $20,055,556.60 (R. 572, 1642–1721). In these suits more than $7,500,000 additional was asked for and judgment was awarded for $5,272,075.10, about $3,800,000 of which recovery represented bonus for savings on the contracts here in issue.[6] Bethlehem, which assumed no risk of loss, has thus been awarded profits on these contracts amounting to approximately $24,000,000, representing an average profit of about 26 percent of the actual base cost and 22 percent of the actual costs including extra work (*cf.* R. 572 and R. 554). These figures do not take into account any profits made by Bethlehem Steel Company, an affiliate, on the sales to Bethlehem of substantial amounts of materials used in the construction of the vessels (R. 604).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Third Circuit erred:

1. In holding that the "bonus for savings" provisions required that the bonus be paid regardless

[6] In their Brief in Opposition to the Petition for Writs of Certiorari (pp. 7–8), Respondents may have given the impression that at least to the amount of $1,716,091.36 the judgment below did not represent profits. It is true that not all of the recovery related to the 13 contracts involved here, but practically all of it did represent profits, either on these contracts or on others not now in dispute.

of the existence of savings due to increased efficiency.

2. In failing to hold the "bonus for savings" provisions of the contracts, as those provisions were construed by it, invalid and unenforceable for want of consideration and failure of performance.

3. In failing to hold that there is no evidence that any savings resulted from increased efficiency or unusual effort due to the "bonus for savings" provisions.

4. In failing to hold that, as construed by it, and in the circumstances revealed by these cases, the "bonus for savings" provisions were unenforceable and invalid as contrary to public policy.

5. In failing to hold that, in the circumstances under which these contracts were executed, the profits made by Bethlehem were so inordinate and unconscionable as to bar recovery by respondents of any further profits, and to require respondents to account for excessive profits already received.

6. In failing to hold that, if the contracts are to be construed as the court below has construed them, and are enforceable as so construed, the officials of the Fleet Corporation had no authority to enter into such contracts, and it was a breach of their fiduciary duty to do so.

7. In affirming the judgments of the District Court.

SUMMARY OF ARGUMENT

Bethlehem's profits under the fixed-fee provisions of these contracts amount to almost $12,000,

000, or about 10.9 percent of the actual cost. We do not contest its right to retain these profits. We insist, however, that Bethlehem can recover none of the additional $12,000,000 profits which it claims under the bonus-for-savings provisions of the contracts.

I

The Master and the District Court found that there was no evidence that the difference between the actual and estimated costs of the vessels was due to any increase of efficiency due to Bethlehem's efforts. The opinion of the court below is in accord.

The evidence, if it be examined, makes it plain that no reduction in the cost of the vessels resulted from the bonus-for-savings provisions.

The records of actual cost (Exb. B 32) show that an increase in efficiency occurred only in the case of labor costs. Material and overhead costs varied erratically, and it clearly appears that no increase in efficiency resulted in respect of these costs. Bethlehem makes no suggestion to the contrary.

The increase in efficiency of labor was not due to any efforts of Bethlehem but resulted solely from a restoration of peacetime conditions. Such was the uncontradicted testimony of the witness Brown, employed by Bethlehem for the purpose of assisting in this case, and his testimony is confirmed by that of Powell and Piez. Indeed the record is bar-

ren of any explanation of the methods, if any, employed by Bethlehem to increase labor efficiency.

II

The parties intended that Bethlehem should participate in savings only if the savings were brought about by an increase of efficiency resulting from Bethlehem's special efforts. The Master's finding that Bethlehem was intended to share in savings "however earned" (R. 637) is inconsistent with his finding that the parties intended the bonus "as consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing" (R. 638), and is not supported by substantial evidence.

The contracts required Bethlehem to use its "best efforts" in protecting the interests of the Government, a normal obligation of straight cost-plus wartime agreements, and even in the absence of such a provision such an obligation would be implied. Bethlehem thus undertook to maintain the normal standards of efficiency without compensation other than the fixed fee. If the literal language of the bonus-for-savings clause be deemed to create an ambiguity, resort may be had to the explanations of the parties to the negotiations. The testimony of these parties leaves no doubt that Bethlehem was not to share in "savings" save as a result of an increase of efficiency due to its special efforts.

The witness Powell expressly testified that the bonus-for-savings clause was intended to provide an incentive for efficiency, and that while the estimates of cost were "liberal," Bethlehem expected to profit by savings only by increasing the efficiency of its yards. Piez testified to the same understanding.

The fact that the estimates of cost were "liberal" and were meant to be so by both parties provides no support for the contention that Bethlehem was intended to participate in "savings" however earned. The estimates were "liberal" in order to provide an incentive to increase efficiency, not to permit additional compensation without additional effort. Nor can it be suggested that the bonus-for-savings clause, as construed by the Government, could be provocative of disputes and hence that the parties could not have intended such an interpretation. Conditions or requirements of like generality are found throughout those contracts and are common in commercial agreements.

III

The bonus-for-savings clause, as construed by Bethlehem to permit it to share in "savings" however caused, is void and unenforceable for a want of a separate consideration. The sole advantage of the clause ever suggested by anyone is that it offers an incentive to increase efficiency through special efforts and thus to keep costs down. It cannot be

justified as a device to increase the stated fee for performance on a cost-plus basis. In this view, the clause can be sustained only if supported by separate consideration, since no public officer has any authority to bind the Government to pay something for nothing. Such has been the settled rule of the Court of Claims in cases involving identical provisions.

It cannot successfully be contended that proof of special efforts resulting in savings is impracticable and that the enforcement of the clause without such a showing is nevertheless in the public interest. The nature of the estimates of costs in these contracts readily permit such a showing if it has any foundation in fact.

IV

The bonus-for-savings provisions so construed are void and unenforcible because of the circumstances under which they were negotiated and because they permit Bethlehem inordinate profits.

A. Under the established practice of the Navy and War Departments, the Fleet Corporation, and other branches of the Government, the maximum fee allowed for similar services when these contracts were made was 10% of the actual or estimated cost in straight cost-plus contracts. The suggestion that 10% would be inadequate for an old-line company such as Bethlehem finds no recognition in practice and is without substance in fact.

This should be the measure of the compensation to which Bethlehem is entitled, since it neither furnished nor was obliged to furnish services other than those obligated under straight cost-plus contracts. It is immaterial that the total cost under the bonus-for-savings form of contract proved to be less than that paid to other shipbuilders under lump-sum and cost-plus agreements. The fact, if true, is not due to any service rendered by Bethlehem to which the Government was not entitled in the absence of a bonus-for-savings clause. The fair compensation for Bethlehem services must be measured by its own costs and not those of other shipbuilders. Moreover, the comparison is wholly unreliable since most of the other shipbuilders operated under lump-sum contracts, incurring a substantial risk, and the few cost-plus contracts were averaged in the total.

The contention that these contracts must be judged as of the time they were executed and that so viewed they are fair and reasonable is without substance. The estimates of cost made were known to include large allowances for wartime contingencies which might never occur. The contract, as construed by Bethlehem, thus contemplated large profits even though the savings resulted from the nonoccurrence of such contingencies without any additional risk or efforts by Bethlehem and even though the Government received nothing to which it would not have been entitled to under a straight cost-plus agreement. In fact such was the cause of the "savings."

B. There can be no doubt that Bethlehem refused to undertake the construction of the vessels save under a bonus-for-savings form of agreement and on the basis of its own unexplained estimates of cost. There is likewise no doubt that the Fleet Corporation regarded these terms as harsh and accepted them only because they were the best which could be secured under "very difficult conditions" and because Bethlehem's organization was essential to the success of its shipbuilding program.

In such circumstances the courts may disregard the letter of the contracts and enforce them according to their justice. While the common law has not usually recognized economic duress as a ground for setting aside a contract, the courts of this country have frequently refused to enforce agreements entered into by private parties in circumstances of distress which made refusal impossible. The Government, since the ships were an indispensable element of its war efforts, had no option but to accept Bethlehem's minimum terms. It did not have the freedom always available to private persons, to do without because the price is high, and so acted under duress.

Bethlehem should therefore be permitted to receive no more than the fair value of its services. The maximum allowance on this basis is cost plus the fixed fee.

C. Even if the Fleet Corporation entered into the contracts without legal duress the contracts as contrued by Bethlehem are unconcionable. If the parties had expressly stipulated for a fee of 20%

or 25% of actual or estimated cost on a straight cost-plus basis it cannot seriously be doubted that the agreements would be condemned as unconscionable. A fee more than twice the usual amount for similar services could have no relation to the value of the services and could only be exacted by trading on the Government's necessities. It is immaterial that sane men would agree to such terms by reason of a war emergency. The test is not merely whether the contract is one which a man in his senses would agree to but whether the terms are such that fair and honest men would accept. Judged by this standard, a provision expressly allowing more than twice the normal charge in Government wartime contracts would seem plainly unconscionable. The bonus-for-savings provisions, construed to contemplate and to accomplish the same result, stands on the same footing.

D. Upon any one of the foregoing considerations the Government officers were without authority to bind the Government to such a contract. We do not ask the Court to go behind the expert judgment of the executive officials, but simply to free the Government of contract provisions exacted from men unable to refuse.

ARGUMENT

The Government's position in this case is simple: Bethlehem neither in law nor in equity is entitled to profits amounting to almost $24,000,000 upon contracts in which it assumed no risk of loss whatever.

We do not contest the right of Bethlehem to retain its "fixed fee" amounting to almost $12,000,000 or about 10.9 percent of the actual cost of the contracts (see R. 572). We insist, however, that Bethlehem can claim nothing under the bonus-for-savings provisions of the contract.

If Bethlehem had in fact produced the so-called savings through increased efficiency due to its own special efforts, we should not contest Bethlehem's right to recovery. But in fact Bethlehem's claim to an additional $12,000,000 profit rests simply on the fact that its cost estimates submitted to the Fleet Corporation were about $24,000,000 above actual cost.

In these circumstances the bonus-for-savings provisions do not warrant Bethlehem's recovery of the additional profits claimed under these provisions. This conclusion is required for each of several reasons: (1) The bonus-for-savings provisions permit bonus payments only upon a showing that the savings were accomplished through special efforts by Bethlehem to increase its efficiency. (2) If construed to permit Bethlehem to participate in "savings," however caused, the bonus-for-savings provisions are void and unenforcible because: (a) they would be a separate agreement for the Government to make a gift; (b) they were exacted under duress; and (c) they are unconscionable and operate to present Bethlehem with inordinate profits.

I

THE "SAVINGS" DID NOT RESULT FROM AN INCREASE IN EFFICIENCY DUE TO BETHLEHEM'S EFFORTS

1. *The Findings Below.*—The Master found (R. 678) that there was "no evidence that the cost of construction of the respective tank and cargo ships in controversy was reduced as a result of the 'bonus-for-savings' provisions of the respective contracts." Bethlehem neither excepted to this finding (R. 712–713), nor requested any different finding from the Master (R. 681–692). The District Court adopted the Master's findings (R. 742); in addition, the opinion of the Court discusses the bonus-for-savings provisions upon the assumption that Bethlehem contributed nothing to cause the "savings" (R. 737–742).

The Circuit Court of Appeals, however, said, "We need only add that the record contains some evidence tending to show that the savings resulted, in part at least, from increased efficiency" (R. 2330). As we show below, this statement, if it is to find any support in the record, means only that there was an increase in labor efficiency after termination of the war, and not that it resulted from Bethlehem's efforts. It is, therefore, not inconsistent with the findings of the Master and the District Court. It is to be noted that the Circuit Court of Appeals affirmed without qualification (R. 2333) the judgment of the District Court which expressly adopted and confirmed the findings of the Referee and Special Master (R. 760–1).

The findings of the Master and the District Court, not excepted to by Bethlehem, and not contradicted by the Circuit Court of Appeals, relieve this Court of the necessity of examining the evidence. Compare *Crawford* v. *Neal*, 144 U. S. 585, 596; *Davis* v. *Schwartz*, 155 U. S. 631, 636–7; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 261; *Greey* v. *Dockendorff*, 231 U. S. 513, 514. But, if that examination be made, it is plain that the "savings" did not result from any special efforts by Bethlehem to increase its efficiency.

2. *The Evidence.*—Bethlehem cannot urge that the savings are to be traced to its efforts to increase efficiency. And the records of actual cost (Ex. B 32, R. 1932) conclusively show that no increase in efficiency resulted from the "bonus-for-savings" clause. A comparison of comparable costs of vessels constructed under successive contracts show both marked increases and decreases in material and overhead costs (Ex. B 32), plainly negativing an increase in efficiency in respect of these two elements of cost. In fact, there is no suggestion in the record that Bethlehem made any special effort to reduce such costs, and Bethlehem never has and does not now make any contention that the difference between estimated and actual cost resulted from Bethlehem's special effort or any increase of efficiency in respect of such costs. The only element of cost showing a progressive decline is labor cost and it is as to this cost alone that Bethlehem has ever suggested that the saving resulted from an increase of efficiency or that it

made any effort to reduce cost (R. 1368–1369, 1449–1450; see Brief in Opposition, p. 24, n.).

A comparison of the cost of the 10,100-ton tankers constructed at the Union shipyard under the early contract, No. 177, with similar tankers built at Union under the later contract, No. 301, shows the following (Ex. B 32):

Contract No.	Labor	Material	Plant operating and overhead
177	$547,661	$848,497	$266,958
301	429,553	696,338	237,138

A comparison of 10,100-ton tankers built at Sparrows Point shipyard under the early contract, No. 179, with similar vessels constructed under subsequent successive contracts, Nos. 226 and 300, at the same yard, shows the following:

Contract No.	Labor	Material	Plant operating and overhead
179	$538,206	$739,265	$281,455
226	496,575	682,503	264,582
300	459,050	657,141	277,667

The cost of the cargo vessels built at Union under the early contract, No. 191, compares with that of similar vessels constructed at Union under subsequent successive contracts, Nos. 230 and 301, as follows:

Contract No.	Labor	Material	Plant operating and overhead
191	$903,632	$689,191	$163,005
230	444,997	799,077	187,134
301	415,800	808,339	273,208

A comparison of costs of similar cargo vessels constructed at Sparrows Point shipyard under the early contract No. 196 and the subsequent contract No. 226 shows the following:

Contract No.	Labor	Material	Plant Operating and Overhead
196	$379,907	$429,932	$175,082
226	317,311	496,669	193,743

The cost of the 9100-ton tankers constructed at Fore River under Contract No. 183 compares with the cost of the similar vessels built under the subsequent Contract No. 299, as follows:

Contract No.	Labor	Material	Plant Operating and Overhead
183	$483,028	$729,676	$295,300
299	404,442	669,470	304,029

(See also R. 1931.)

A comparison of the cost of the Harlan 7500 ton tankers constructed under early Contract No. 178 and the later Contract No. 314 shows the following:

Contract No.	Labor	Material	Plant Operating and Overhead
178	$589,004	$625,288	$460,631
314	384,586	603,893	322,570

These comparisons show that there was a progressive or consistent decline in costs only with

respect to labor costs.[1] The cost of materials, as compared with earlier contracts, rose in four instances and fell in four. The costs of plant operation and overhead, which might be expected to be peculiarly sensitive to an increase in efficiency, fell in only three instances and rose in five. These comparisons, then, leave no doubt that so far as these savings resulted from an increase of efficiency, it occurred only in the matter of labor costs. All other costs varied up and down in a manner which cannot be reconciled with any increase of efficiency in these respects. Bethlehem makes no suggestion to the contrary.

It is equally clear that the increase in efficiency of labor was due solely to early termination of the war resulting in the restoration of peace-time conditions and had no relation whatever to any efforts of Bethlehem. Brown's estimates, it will be recalled, allowed for a decrease of efficiency of labor of 30% due to the disorganization caused by the war. Brown, who was reemployed by Bethlehem in 1924 to assist in connection with this case (R. 922–923), testified that he had made a careful study of the trend of Bethlehem's labor costs and that this study showed that the efficiency of labor prior to the Armistice decreased more than 30%, and that all the increase of efficiency occurred after that date (R. 1531–1537, 988–989, 1063).

[1] The comparisons referred to are the only ones which can be made on the basis of Exhibit B 32 between similar vessels constructed at the same yards.

On the termination of the war, Piez testified, "things changed very decidedly. Overtime work was cut out; night work was cut out; inefficient men were dropped; there was a very big cut in the payrolls; and the only efficient [*sic*] men were kept" (R. 1528). And Powell insisted that it was "purely a guess" whether any savings could have been realized if all the construction program had been carried on under war conditions (R. 1442, see 1370).

Indeed, there is no indication that Bethlehem made any effort to increase labor efficiency beyond continuing in effect the methods established prior to the negotiation of these contracts. Bethlehem's evidence on the point, so far as we have been able to determine, is the testimony of Powell at pages 1367–1371 and 1436 of the record. Powell testified that at the time the contracts were negotiated, the demand for labor had so far exceeded the supply that "labor was completely out of hand. * * * There was no discipline in the yards, unionism was rampant" and the labor situation was the worst in his experience (R. 1367-1368). If the conditions which prevailed at Harlan had spread to the other plants, so Powell testified, Bethlehem would "not have made a nickel" (R. 1368). He further testified that eventually Bethlehem got the conditions at Harlan "in hand" and did improve them, although they

were never as good as at other yards "until after the war was over" (R. 1368). At Sparrows Point, he stated, there were difficult transportation and housing problems, and conditions there were "much less satisfactory" than at Union and Fore River (R. 1368). What conditions prevailed at these latter yards and what improvements were made, Powell did not specifically state. He did testify, however, that Bethlehem was "very successful, under the conditions," in giving its "foremen and bosses" an incentive to increase the efficiency of the yards, but that the "early" termination of the war "undoubtedly" assisted Bethlehem to do this (R. 1369–1370). Bethlehem began to get "better control" of labor from early 1918 (R. 1436), according to Powell, but the witness did not identify the date at which labor efficiency increased (R. 1436). If his vague and general testimony is to be construed as evidencing any increase of efficiency before the Armistice, it is obviously in direct conflict with the thoroughly documented testimony of Brown previously discussed.

Moreover, Powell made no mention of the methods, if any, by which any increase of efficiency was brought about. Prior to the execution of the contract, Bethlehem had instituted a new system of specialization and training of workmen to increase efficiency which was rapidly developed during the latter part of 1917 (R. 608), and prior to the ne-

gotiations the Fleet Corporation had also established a service department for the purpose of obtaining an adequate supply of trained labor (R. 607). In view of these efforts, it is very significant that Powell made no mention of any additional methods for increasing efficiency after the agreements with the Fleet Corporation were negotiated.[8] The inference is plain that the increase in efficiency of labor was due solely, as Brown indicated, to the restoration of peacetime conditions, and had no relation to the inauguration of any methods by Bethlehem to increase efficiency.

The Master's finding that there was no evidence that savings resulted from the bonus-for-savings clause is thus amply supported by the record, even if Bethlehem were in a position to challenge its accuracy.

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[8] Powell also testified that in the disorganized state of the labor market caused by the War, Bethlehem's operations were interrupted by a number of strikes over wages and hours and "the union question" (R. 1429–1430). One effective means of eliminating such difficulties, as this Court has recognized (*Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 545–546; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 42) is to encourage collective bargaining. Powell's vague and general testimony (R. 1267–1370, 1429–1430, 1435–1436) contains no suggestion that this or any other method of improving labor efficiency was put into effect during the period of construction under these contracts.

II

THE CONTRACTS PERMIT THE BONUS PAYMENTS ONLY UPON A SHOWING THAT BETHLEHEM BY SPECIAL EFFORTS INCREASED ITS EFFICIENCY

The Master found that Bethlehem was intended to participate in savings regardless of how they were earned (R. 637). This conclusion, even if it be viewed as a question of fact rather than law, is, as we shall show, at war with his detailed subsidiary findings and with the testimony on which they are based. This Court may, therefore, disregard the ultimate conclusion, even if concurred in by two courts, in favor of the circumstantial findings. Cf. *United States* v. *Esnault-Pelterie*, 303 U. S. 26, 31.

It has never been suggested in this case that the bonus-for-savings provisions had any purpose other than to increase the efficiency of the contractor's performance. The sole question is whether the operation of these provisions is to be limited in accordance with their purpose.

1. *The Terms of the Contract.*—The contracts between the Fleet Corporation and Bethlehem followed a standard pattern.[9] The first of these, contract No. 177, may be taken as illustrative (R.

[9] The 13 contracts in issue here appear in the record as follows: Contract No. 177, R. 109; No. 178, R. 122; No. 179, R. 135; No. 183, R. 158; No. 184, R. 2089; No. 191, R. 171; No. 196, R. 184; No. 226, R. 197; No. 230, R. 210; No. 299, R. 222; No. 300, R. 234; No. 301, R. 246; No. 314, R. 270.

109–121). Article I provides that "the Contractor shall forthwith proceed with the construction of twelve (12) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity" (R. 110). Other Articles provide for alterations (II, R. 111), casualty insurance (IX, R. 111–112), obedience to Fleet Corporation labor orders (X, R. 112) and use of the Fleet Corporation powers to obtain priorities (XII, R. 112–113), and methods of paying and accounting for Bethlehem's actual costs (XV, XVI, XVII, R. 113–117). Bethlehem's claim to the bonus-for-savings is based on Article XIX, which provides (R. 118):

> Should the actual cost be less than the estimated * * * cost * * *, the contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of * * * $210,000, one-half the amount by which such actual cost of each vessel falls short of the estimated cost * * *.

Bethlehem urges that the inquiry as to the interpretation of the contract should stop here, and that under this provision it is entitled to $2,741,287.33 additional profits, or one-half the amount by which the estimated cost exceeded the actual cost (see R. 572). But the contract is to be interpreted as a whole. So read, we urge, it imports an undertaking by Bethlehem to do something to justify this separate and extraordinary payment.

Bethlehem was under a definite obligation to the Fleet Corporation to maintain a certain standard of efficiency and good faith without any special award. The contract, in Article XXIII (R. 120), provided that Bethlehem "in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner." This was a typical provision of wartime cost-plus contracts containing no bonus-for-savings allowance. See, e. g., *United States* v. *A. Bentley & Sons Co.*, 293 Fed. 229, 235 (S. D. Ohio); *United States* v. *George A. Fuller Co., Inc.*, 296 Fed. 178, 180 (D. Kans.). Even in the absence of such a provision, the law would impose a similar obligation.[10]

Bethlehem itself, during this same period, had entered into contracts with the Government which did not contain this bonus-for-savings provision (R. 655). The additional provision, when read against the other provisions of the contract and the

[10] See, e. g., *United States* v. *A. Bentley & Sons Co.*, *supra*; *United States* v. *George A. Fuller Co., Inc.*, *supra*; *Westendorf* v. *Dininny*, 103 App. Div. 593, 594 (1st Dept.); *Title Guarantee & Trust Co.* v. *Pam*, 155 N. Y. Supp. 333, 336–337 (Sup. Ct.), aff'd 192 App. Div. 268, at 322 (1st Dept.), aff'd on other grounds 232 N. Y. 441; *Hoggson Bros.* v. *Spieker-man*, 175 App. Div. 144, 148 (1st Dept.); *Hitt* v. *Smallwood*, 147 Va. 778, 787; *Rutland Sash & Door Co., Inc.* v. *Gleason*, 98 Vt. 215, 220–221; *Jamieson Construction Co., Ltd.* v. *Lacombe & N. W. R. Co.* [1926], 2 D. L. R. 653, 655 (Alta. Sup. Ct.); *Burke & James, Inc.* v. *United States*, 63 C. Cls. 36; cf. *Johnson* v. *Kusminsky*, 287 Pa. 425, 430; *Lytle, Campbell & Co.* v. *Somers, Fitler & Todd Co.*, 276 Pa. 409, 419; *Union Supply Co.* v. *Morris*, 220 Cal. 331; *Annan* v. *Woods*, 158 La. 663.

normal practice of Government contracting, must have imported an additional performance on the part of the contractor as a condition of participation in "savings." The additional performance could be nothing but a reduction by Bethlehem, if it was to secure these additional and riskless profits, of the actual cost below estimated costs through special efforts to increase its efficiency. The only alternative is the unreasonable interpretation that Bethlehem was to receive the added compensation simply as a reward for the inaccuracy of its estimate of actual costs.

Viewed most favorably to Bethlehem, this unreasonable interpretation of the bonus-for-savings provision is at war with the inferences from the "best-efforts" provision, and creates an ambiguity requiring an examination of collateral evidence as to the intention of the parties. *Van Sycke* v. *Arsuaga*, 231 U. S. 601, 611–613; *Metcalf* v. *Williams*, 104 U. S. 93, 97–98; *Wheelwright* v. *Pure Milk Association*, 208 Wis. 40; *Dorrington* v. *Manning*, 135 Pa. Super. 194, 200; *McGrath* v. *Quinn*, 218 Mass. 27, 29.

2. *The Understanding of the Parties.*—The evidence clearly shows that the parties intended this construction of the contracts.

Powell, who originated the clause (R. 627), gave the following unequivocal answer to a direct question from his counsel:

> Q. So that, if Bethlehem was to make any money out of these contracts in excess of the

fixed fee, it was your judgment that the only way to do it was by increasing the efficiency of the yards?

A. Exactly (R. 1369).

And he later was equally explicit:

> The estimate was a figure which we had to shoot at that in my judgment gave us a reasonable profit or a chance of making a substantial saving. To make that saving, we had to operate more efficiently than what we might say was average efficiency under conditions that then existed. If we were going to make that saving, we had to overcome any increased cost due to decreased efficiency, and increase efficiency beyond what it was at that time (R. 1435).

Indeed, Powell stated that the "primary purpose" of this form of contract was to give Bethlehem's organization an "incentive" to make such increase of efficiency (R. 1369, 1340). Almost every other reference by Bethlehem's agents to the half-savings provision not only supports the view that to gain a bonus Bethlehem was required to increase efficiency or to reduce costs, but is consistent with no other interpretation (R. 1366–1369, 1379, 1436, 1438, 1449, 1641, but cf. 1446–1447). It was in this view presumably that Powell and Brown represented the estimates of base cost finally accepted as the "lowest prices which according to their best and mature judgment, would afford Bethlehem a reasonable opportunity to effect 'savings' as a result of its efforts and ability to increase efficiency of management and labor as compared with average

efficiency then existing" (R. 640). Piez' understanding of the "savings" clause was the same as that expressed in Powell's testimony (R. 1499).

On the basis of this evidence, the Master expressly found that it was understood that any substantial "savings" effected by Bethlehem with respect to respective costs of construction were supposed to result solely from an increase in the average efficiency of labor and management, and service of material, then existing (R. 636). While he denied findings which implied that the contract provision would operate only in the event of increased efficiency (R. 637–638), the Master had no doubt that this factor was the only reason for including the provision. He found that it was "understood that participation in 'savings' was supposed to represent a bonus or additional compensation to be earned by Bethlehem as consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing" (R. 638), and that "it was understood that Bethlehem had made such study of cost data available to it as would enable it to determine base prices which would afford it a reasonable opportunity of making a reasonable 'savings,' provided it was successful in its efforts to increase the efficiency of management and labor as compared with average efficiency then existing" (R. 639).

Bethlehem appears to contend that, since both parties intended the estimates of base cost to be "liberal," the contract should be construed to permit participation in "savings" regardless of how earned. The evidence and findings on which Bethlehem relies, however, show that the estimates were intended to be liberal in order to provide an "incentive for efficiency" and stimulate the shipbuilders to exercise their "ingenuity" and to their "very best" (R. 552, 684–685, 1499). Thus, the "liberal" character of the estimates, far from supporting Bethlehem's position, suggests the opposite conclusion.

3. *The Interpretation is Reasonable.*—In the court below, Bethlehem contended that if the contract were construed as the Government suggests, the "savings" clause would be provocative of disputes and that if the parties had intended such a construction, they would have included a definition or formula for determining the application of the intended standard (Br. pp. 21–22). The contention is plainly specious. The contracts fairly bristle with provisions even more likely to engender fundamental differences of construction. Thus the agreements required Bethlehem to use its "best efforts" to protect the Government's interests (R. 120). In the critical section XVII "actual cost" was defined to include "a proper proportion" of running expenses, interest, taxes, physical losses, and "a reasonable allowance for depreciation" (R.

116–117). The Fleet Corporation had the power to make "reasonable alterations" in the plans and specifications (Art. II, R. 111). Casualty insurance should be procured so far as available "at reasonable cost" (Art. IX, R. 111). "Adequate" accounts should be kept (Art. XVI, R. 115). The parties may have considered that any dispute as to the extent of Bethlehem's share in "savings," as well as disputes over other indefinite provisions, would be resolved by the arbitration provision of section XX (see, e. g., R. 2108) which applies in terms to any case in which the parties "fail to agree as to any matter contained in or connected with this contract, or if any doubt or dispute arises as to the meaning, construction or effect of this contract, or of any of the provisions or covenants hereof * * *." If so, the reason for omitting a precise definition in this and the other clauses mentioned is obvious.[11] But whether the subject was deemed a proper one for arbitration or not, it is clear that the generality of the obligation provides no reason for implying an intention not to create one.

Certainly it cannot seriously be suggested that proof of special efforts and the relation of such

[11] Neither party has relied on the arbitration provision as a defense to the respective actions, possibly because the General Manager of the Fleet Corporation was designated as arbiter in the contracts (R. 2108) and there was no such officer at the time this dispute arose.

efforts to increased efficiency is not feasible, and hence was not intended. The determination of increases or decreases in efficiency and their causes is a matter of common business experience and, particularly in the circumstances of this case, the parties could not have supposed that such a determination would involve any unusual difficulties. The relative simplicity of determining whether any increase of efficiency occurred is evidenced by the showing made by Bethlehem on the basis of the actual records of costs embodied in Ex. B 32. The cause of any increase of efficiency is likewise readily demonstrable. The estimates of cost included in the contracts made "liberal" allowances for increases in material, labor, and overhead costs by reason of definite though unpredictable contingencies owing to the war conditions, and the question whether the "savings" resulted from the nonoccurrence of these contingencies as distinguished from Bethlehem's special efforts is plainly susceptible of proof. There was no difficulty in this case in showing the methods adopted by Bethlehem prior to the execution of these agreements to recruit and train labor and increase its efficiency, and the testimony of Brown that the increase of labor efficiency resulted from restoration of peacetime conditions clearly shows that the cause of increased efficiency may readily be proved.

The Court of Claims has consistently permitted recovery under the bonus-for-savings provisions

only when the "savings" resulted from special efforts of the contractor (see *infra*, pp. 45–48). It has found no difficulty of proof under this view of the provisions. In *Cohen, Endel & Co.* v. *United States*, 60 C. Cls. 513, the court, after proof by the plaintiffs, made the following finding of fact (p. 516):

> The additional work and special care bestowed by the plaintiffs on the work called for by the contract consisted in acquiring a new plant and additional space; additional appliances at more expense; in the expenditure of additional time, effort, and money in executing the contract; in the employment of men, labor, and expense in the handling of and measuring the cloth; and in the increase in the pay roll of employees.
>
> The benefit derived by the United States from the execution of the supplemental contract was in the saving of material consumed in the manufacture of the garments—to be exact, the saving of 5.592 inches per coat; and thus more garments were manufactured from the materials furnished by the United States than would have been manufactured under the terms of the original contract.

And in its opinion the court pointed out that the plaintiffs "did additional work, gave special care, and incurred expense which they were not obliged to do under the original contract of June 29, 1917" (p. 519).

Similarly, in *F. Jacobson & Sons* v. *The United States*, 61 C. Cls. 420, the court found, after proof (p. 423):

> The methods adopted by plaintiffs resulted in a greater saving in Government materials than would have been made if these methods had not been adopted. They produced 13 shirts out of the material allotted to them for 12 shirts. To accomplish this it was necessary that plaintiffs have and maintain larger tables for cutting and more space for work, besides other economies in doing the work. These were maintained and at large additional expense to themselves arising out of increased rents, light, and heat for the additional space, cost of separating the material into shades and different widths whereby the cutting could be done more economically and less waste occur, and the employment of additional help the plaintiffs made saving of material.

We submit, therefore, that the bonus-for-savings provision should be reasonably construed to accord with the intention of the parties, to permit payment of the bonus only if there be a showing of special efforts by Bethlehem to increase its efficiency.[12] Since it made no such efforts in regard to

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[12] The respondent also suggests that the estimates of base cost were represented by Bethlehem as sufficient to provide a reasonable probability of earning 10% of estimated cost plus war and excess profits taxes. Powell testified, however, and the Master found, that taxes were not included in

these contracts, it cannot recover the additional bonus of $12,000,000 for their performance.

III

THE BONUS-FOR-SAVINGS PROVISION, CONSTRUED TO PERMIT BETHLEHEM TO SHARE IN "SAVINGS" HOWEVER CAUSED, IS VOID AND UNENFORCIBLE AS A SEPARATE AGREEMENT TO MAKE A GIFT OF GOVERNMENT MONEY

We have shown that the bonus-for-savings provision was intended by the parties to represent additional consideration only for special efforts by Bethlehem to increase its efficiency. If, however, that provision was intended to permit Bethlehem, without regard to how the "savings" were caused, to receive additional and riskless profits, equal to half of the amount by which estimated costs exceeded actual costs, it is void and unenforcible because the provision, so construed, operates to make a gift of Government property.

It is an elementary principle that public officers cannot give away the property of the Government, and that any contract to do so is void and unenforcible. *Bausch & Lomb Optical Co.* v. *United States*, 78 C. Cls. 584, 607, certiorari denied, 292

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the estimates (R. 1366, 640), and the fact that Bethlehem hoped to earn a profit large enough to leave it a 10-percent profit after taxes is not necessarily inconsistent with the testimony and findings that "liberal" estimates were intended to provide an incentive for efficiency. (See *infra*, pp. 59-60.)

U. S. 645; cf. *Vulcanite Portland Cement Co.* v. *United States*, 74 C. Cls. 692, 705; *Yale & Towne Mfg. Co.* v. *United States*, 67 C. Cls. 618, 625; *Littauer Bros.* v. *United States*, 63 C. Cls. 112, 120. That principle is fully applicable here.

1. *There Was No Consideration for the Provisions.*—The bonus-for-savings provision is construed by Bethlehem to import no additional performance on its part. It would, under this construction, plainly be an agreement to make a gift if it had been added to the original contract by supplementary agreement.[13] Bethlehem's argument, then, must be that the provision is enforcible simply because it was incorporated in the original contract rather than added by supplementary agreement. It contends, in other words, that the consideration moving to Bethlehem in exchange for the construction of the vessels was not only the cost plus fixed fee but the bonus-for-savings as well (Br. in Opp. p. 27). The contention is unsound.

As a general rule of contract law, it is doubtless true that Bethlehem's performance would consti-

[13] It is a familiar doctrine of contract law, peculiarly applicable to the Government, that supplemental agreements which promise additional compensation if the other party does no more than perform the original contract are void for want of consideration. *Wilcox* v. *United States*, 56 C. Cls. 224, 235; *Yale & Towne Mfg. Co.* v. *United States*, 67 C. Cls. 618, 625; *Vulcanite Portland Cement Co.* v. *United States*, 74 C. Cls. 692, 705; *Bausch & Lomb Optical Co.* v. *United States*, 78 C. Cls. 584, 607, certiorari denied, 292 U. S. 645.

tute technical consideration for payment under the original contract of the actual cost, a fixed fee of about 10 percent of the estimated costs, and also one-half of the "savings" below estimated costs. But that general rule is based upon the assumption that the additional compensation represented by the bonus-for-savings provision was in truth consideration for Bethlehem's performance. The facts in this case refute that assumption, and show that the bonus-for-savings provisions in these contracts were actually included without any corresponding consideration whatever on the part of Bethlehem.

The consideration for the bonus-for-savings was not the construction of the vessels but Bethlehem's special efforts resulting in increased efficiency. Both parties are agreed that the purpose of the bonus-for-saving clause was to provide an incentive to increased efficiency, and the Master found that at the time of the negotiations Bethlehem's participation in savings was understood to represent "additional compensation" to Bethlehem "as consideration for its special efforts and efforts to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing. (R. 638.) Bethlehem has not and cannot attack this finding here. Indeed, as we show below (*infra*, pp. 54–55), 10% was the normal compensation for construction of vessels under straight cost plus contracts obligating the contractor to give his best

efforts, a standard recognized and accepted by Bethlehem (R. 655). The sole question therefore is whether the bonus-for-savings clause, construed to permit Bethlehem to share in savings where the consideration bargained for has failed, is a valid agreement. The principle that a public officer cannot give away public property would seem plainly to require that the question be answered in the negative.

Moreover, for the purpose of showing that the compensation exacted for the vessels is not unconscionable, Bethlehem is forced to justify the bonus-for-savings provision, not on the ground that the construction of the vessels was the agreed exchange, but solely on the ground that it secures to the Government, beyond cost-plus contracts, the additional benefit of reducing costs because of the incentive to increase efficiency, and that the provisions produced the desired result. Otherwise, the bonus-for-savings provisions would be plainly unconscionable (see *infra*, pp. 75–85).

An undertaking by the Government to pay additional compensation which can be justified only by additional benefits to the Government must, as a matter of law, be supported by separate consideration. This is required not only by technical principles of contract law, but also by the principle of public policy which forbids Government officers to make a gift of public moneys. Where, as in this case, the sole justification for the Government's un-

dertaking to pay a bonus is a separate benefit to the Government, an undertaking in the original contract to pay such a bonus without this benefit, even though supported by technical consideration, is no less a conflict with this public policy than is a similar agreement in a supplemental contract.

2. *The Decisions.*—Such has long been the established doctrine of the Court of Claims with respect to the bonus-for-savings clause. In *J. J. Preis & Co.* v. *United States*, 58 C. Cls. 81, 86, the court held that the contractor could recover on a bonus-for-savings clause embodied in a supplemental agreement only to the extent that savings were made "as a result of its extra care under that contract."

In *Burke & James, Inc.* v. *United States*, 63 C. Cls. 36, the Court extended the doctrine to a case in which the plaintiff brought suit under a bonus-for-savings clause which had been incorporated in the original agreement; the Government had paid the actual costs, plus the fixed profit. No attempt was made to show that the savings were due to the plaintiff's extra care. In rejecting this demand, the Court of Claims said (p. 53):

> It was an adopted practice of officers of the Government during the stress of war-time needs to insert in some cost-plus contracts a bonus-for-savings clause. * * * Manifestly the purpose contemplated by agreeing to pay a bonus for saving was to put a premium upon economy in production and thus

> derive for the Government a real and substantial monetary benefit. In other words, the consideration for the undertaking was the benefit accruing to the Government by a reduction in the cost of materials below the contract allowance. * * *

After reviewing its previous decisions, the court continued (p. 55):

> It is neither an unjust nor an unfair deduction from the record to state that, eliminating the bonus-for-savings clause from the contract entirely, the cameras would have cost in materials exactly what they did cost. * * * No attempt was made to establish consideration for the savings clause, save an argument that it was an inseparable ingredient of the total price to be paid * * * and an insistence for the enforcement of the letter of the contract.

The court concluded (pp. 56–57):

> It is axiomatic * * * that a Government officer is without lawful authority to give away the rights of the Government. A clause in a Government contract without consideration is nonenforceable. * * * In the absence of express authority so to do, a Government officer may not pay gratuities for the performance of contractual duties which, under the very terms of the contract, the contractor is obligated to perform.

The court, therefore, held that the promise to pay a percentage of savings was severable from the

stipulation to pay cost and the fixed fee, both as to consideration and as to performance, and that the failure to prove increased efficiency, savings in the use of materials, or other benefit to the Government because of some extraordinary effort, which would not have been made but for the bonus-for-savings clause, barred recovery (pp. 57–58). In *Cohen, Endel & Co.* v. *United States*, 60 C. Cls. 513, *F. Jacobson & Sons* v. *The United States*, 61 C. Cls. 420, and *Kling Bros. & Co., Inc.* v. *United States*, 89 C. Cls. 329, the same principles were announced.

Dayton Airplane Co. v. *United States*, 21 F. (2d) 673, 682–683 (C. C. A., 6th) is not to the contrary. No claim seems to have been made there that the contractor had not effected any savings; the court decided only that the clauses were not *per se* opposed to public policy, and in stressing the purpose of the provision to keep down costs, the court seems to agree with the views we maintain. Similarly, in *Wells* v. *Carlisle Tire Corp.*, 98 Conn. 657, the only nongovernmental case involving a bonus-for-savings clause which we have found, there was no claim that the savings were fortuitious; nevertheless the language of the opinion is apt (pp. 663–664):

> The "savings clause" was inserted in order to furnish the contractor with a motive to keep the cost of the work as near to his estimate as possible; if by his fidelity, competency, energy and diligence he saved the

owner from paying this maximum price, he would receive one fourth of the saving. The purpose of the savings clause was to effect a real saving to the defendant by giving the contractor a part of what he saved below a fixed amount.

The decisions of the Court of Claims seem obviously sound; they weld together accepted principles of contract law and public policy, to produce a rule which assures freedom to the contracting officers, justice to the contractor, and protection to the Government against flagrant impositions by contractors determined to capitalize upon a national emergency.

3. *There is No Valid Objection to the Rule.*—The only reason which respondent has hitherto advanced to discredit the Court of Claims doctrine is that proof of such an increase in efficiency due to special efforts would be difficult and that the bonus-for-savings clause is of such great advantage as to require that it be upheld even where proof that it resulted in savings is dispensed with. Whatever may be said in support of this view in normal times, when estimates can reasonably be made, as Powell testified, with a variation of only 5 percent above or below a mean (R. 1341), it is wholly indefensible where estimates include large allowances for well-defined but very uncertain contingencies arising out of the war. See Uniform Contracts and Cost Accounting Definitions and Methods; Recommen-

dations by Interdepartmental Conference, July 1917 (Govt. Printing Office), pp. 5–6.

Powell, Bethlehem's witness, explained in detail that, in the circumstances of these contracts, estimates could reasonably vary 75 percent, because of inability to predict or control costs in wartime (R. 1348–1350). As Powell testified, "There was no such thing as an accurate estimate for a ship under the conditions as they existed at that time" (R. 1349). The Master accepted this view in concluding that any estimate of probable future cost was a matter of "educated guessing" (R. 624, 619), and it was undoubtedly on this understanding that the Master found Brown's estimates, which formed the basis of the contracts, to be reasonable (R. 688) and to be "as accurate as might be expected under the uncertain conditions prevailing at the time" (R. 683).

Because of the conditions under which they were made, Brown's estimates included specific substantial allowances for increase in labor, material, and overhead costs which might occur by reason of well-recognized contingencies (*supra*, p. 7). It was accordingly an easy matter for Brown to show that the increase in efficiency of labor all occurred after and was due to the restoration of peace-time conditions. (See *supra*, p. 27.) Proof of an increase of efficiency or lack of it likewise required no more than a consideration of the actual cost analysis relied on by Bethlehem (Ex. B 32). (See *supra*, pp. 25–27.)

The same is true as to a showing that special efforts were made. It might perhaps be difficult to make a minute break-down of the precise savings accomplished in each cost category as a result of special efforts to increase efficiency. But there would be no unusual difficulty in making a reasonable estimate of their contribution to any savings below the estimated cost, and none whatever in determining whether or not there were savings, of some amount or other, which resulted from the contractor's efforts to increase efficiency (cf. R. 607–609). This is abundantly proved by the Court of Claims cases, discussed above (pp. 40–41, 45–48), where just such proof has been made.

Here, as we have shown (*supra*, pp. 23–30), Bethlehem has made no showing that the "savings" resulted in any manner from its own efforts to increase efficiency. If the bonus-for-savings provision, then, were construed as offering to Bethlehem this tremendous increment to its riskless profits, it is void and unenforcible, as an attempt to make a gift of Government money.

IV

THE BONUS-FOR-SAVINGS PROVISIONS SO CONSTRUED ARE VOID AND UNENFORCIBLE BECAUSE OF THE CIRCUMSTANCES UNDER WHICH THEY WERE NEGOTIATED AND BECAUSE THEY PERMIT BETHLEHEM INORDINATE PROFITS

If the bonus-for-savings provisions of the contracts are construed to entitle Bethlehem to share

in the "savings" however caused, they are void and unenforcible for the further reasons that they were exacted through circumstances amounting to duress and that they are unconscionable because offering Bethlehem inordinate profits. In the course of each argument, it may be material that Bethlehem's contract terms were excessive under the practice obtaining in the market at the time of execution. We shall, therefore, develop this preliminary inquiry before discussing in detail the legal issues and their consequences.

A. THE BONUS-FOR-SAVINGS PROVISIONS SO CONSTRUED PERMIT INORDINATE PROFITS WHICH WERE CONTEMPLATED AT THE TIME OF EXECUTION

1. *The Profits are Inordinate.*—The fixed fees to which Bethlehem was entitled under the contracts set the lower limit of its profits at $11,962,400, or about 12.9 percent of actual base costs, and about 10.9 percent of actual costs, including wage increases and extra work. The bonus-for-savings provisions open wide opportunity for further gain, and if respondent's claims are sanctioned by this Court, their profits will total about 26 percent of the actual base cost of the ships, and over 22 percent of the actual costs, including extra work. These additional profits, under Bethlehem's contentions, would be realized without any corresponding effort or consideration from Bethlehem other than that due under an ordinary cost-plus contract.

Little need be added to the concurrent findings of the courts below to prove that in the circum-

stances of these transactions the profits were inordinate. The District Court thought that Bethlehem's actions constituted "daylight robbery"; it found an analogy in "the famous Rob Roy distinction who admitted he was a robber but proudly proclaimed that he was no thief" (R. 738). In view of the Circuit Court of Appeals, Bethlehem's insistence upon the extraordinary margin of profit it obtained indicated "an attitude of commercial greed but little diluted with patriotic feeling" (R. 2327); the court observed that "it can hardly be denied that Bethlehem took advantage of the war emergency to drive a hard bargain," and that "Bethlehem may be condemned for having taken advantage of the Nation's necessities to secure inordinate profits" (R. 2328). The Master justified (R. 540–541) the enforcement of such a "hard bargain" upon the ground that—

> It is a matter of conscience how much one takes from those needing service in necessity. It is a matter of honor to pay for such service at the contract price, even though, when the necessity be over, the obligor may regard the weight of his debt unduly burdensome.

The conclusions of the courts below are plainly supported by the evidence in this record and by the accepted practices of wartime contracting.

It cannot be doubted, if the contracts had been entered into on the basis of cost plus a fee measured by a percentage of actual cost, or a fixed per-

centage of an estimated cost, that 10% of actual or estimated cost would constitute the maximum recovery. Such was the usual standard in straight cost-plus contracts at the time these contracts were executed. This was the maximum established by the Navy Department in such cost-plus contracts,[14] and the War Department and other branches of the Government observed the same or even stricter standards.[15] The master took judicial notice of some official reports of armament contracts (R. 546–551) but apparently ignored these primary sources of contracting policy.

Such was the standard enforced by the Fleet Corporation and recognized by Bethlehem itself. In the case of contract No. 182 for the construction of troop ships, executed on the basis of cost plus a percentage of the actual cost, Bethlehem originally demanded 15%, but this offer was rejected by the Fleet Corporation and the fee was fixed at 10%, without any allowance for taxes (R. 655). Indeed, Mr. Schwab, as Director-General of the Fleet Corporation, forced another shipbuilding concern to

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[14] Annual Report of the Secretary of the Navy, fiscal year 1917, H. Doc. No. 618, 65th Cong., 2d Sess., p. 33; *id.* 1919, H. Doc. No. 729, 66th Cong., 2d Sess., pp. 572–576; *id.* 1920, H. Doc. No. 994, 66th Cong., 3d Sess., pp. 147–148.

[15] Annual Report of the Secretary of War, fiscal year 1917, H. Doc. No. 856, 65th Cong., 2d Sess., p. 18; War Department Annual Reports, fiscal year 1919, H. Doc. No. 426, 66th Cong., 2d Sess., pp. 4138–4151; Crowell, *Government War Contracts* (1920), pp. 75, 84–85, 88, 149, 210–212, 217–218, 225, 268–269.

modify existing contracts so that no profit of more than 10 percent could be earned (R. 660–662); this, he hoped, would "prove an object lesson to any other contractors who think that they can take advantage of us to obtain excessive prices for ships" (R. 662).[16]

The respondent and the court below (R. 2329) emphasize the statement of the Master (R. 540) that "Bethlehem was an old-line shipbuilding company, carrying the burdens of idle invested capital over long-time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding indus-

[16] The Master declined to make a finding that 10% of "actual" cost was regarded as reasonable compensation for Fleet Corporation "cost-plus" contracts "when so broadly stated" (R. 662–663), but his comment indicates that, as in the case of many other requested findings, he excepted to the inaccuracy of certain language and gives no indication that he would have rejected the request if "estimated" had been substituted for "actual." Certainly, there is no evidence which would support a different finding. Piez testified, it is true, that the Fleet Corporation had no general policy to limit contractors to 10% of "cost" (R. 1515), but his statement obviously had reference to all classes of contracts, including those with a bonus-for-savings clause, and was not limited to straight cost-plus agreements. The Master took judicial notice of the reports of congressional committees (R. 546–551), but failed to consider the evidence of the practice of the Navy, War, and other Departments cited above. The respondent places some reliance on the extent of profits earned by other corporations during the war and in peacetime, but makes no effort either to distinguish government contracts or lump-sum agreements in which the contractor assumed a large risk (Exhs. B-10, 11, R. 1906–1907).

try, probably was not productive of overhead, such as maintenance, taxes and other carrying charges," but which were "incident to the stand-by service rendered by Bethlehem." The correlative suggestion, that a fixed fee of 10 percent was insufficient, is unfounded. No such distinction, so far as we have been able to discover, was recognized in government cost-plus contracts. Moreover, the suggestion has no basis in the facts of Bethlehem's own experience. Bethlehem's witness, Geiss, testified that prior to the war-time building program, Bethlehem maintained a plant sufficient for normal peacetime demands (R. 1563), that starting in 1915 and 1916, Bethlehem made large additional capital expenditures because it "hoped to make many millions out of our shipyards in securing contracts from foreign countries" (R. 1559), and that the expenditures made by Bethlehem in 1917 and 1918 were partially in completion of the 1915 and 1916 program (R. 1559). The amount invested by Bethlehem for performance of the contracts in issue here was only a small fraction of the capital contributed by the Fleet Corporation for this purpose (R. 1558, 1594–1595).[17]

[17] The Fleet Corporation contributed $4,825,415 for plant expansion (R. 1558), while Bethlehem contributed $627,000 beyond completion of its 1915–1916 program (R. 1558–1559, 1593). The improvements, to be the property of the Fleet Corporation subject to purchase by Bethlehem (R. 412–415) were transferred to Bethlehem without cost as a part of miscellaneous settlements in this case (R. 1722).

Indeed, there can be no question in this case that, apart from any reward for savings, Bethlehem is entitled to only 10% of estimated costs, since the only justification which has ever been advanced for the bonus-for-savings clause is its alleged value as an incentive for efficiency (*supra*, pp. 34–36). The parties may thus be taken to have agreed that the fair compensation for ordinary construction under cost-plus terms is no more than 10% of the estimated cost.

Whatever might be said of a contract allowing a fee varying a small percentage from this standard, we assert, without fear of contradiction, that a wartime contract expressly providing for a risk-less fee of 20 or 25 percent of actual or estimated cost, would be recognized as inordinate in a straight cost-plus contract. Such a difference from the norm is not one of degree but of kind. A fee twice or more the usual amount involves such a marked departure from the usual practice that it is compelling evidence of extortion on the sole basis of the prevailing standards of the market place. We do not understand Bethlehem to make any contention to the contrary. The bonus-for-savings contracts as construed by Bethlehem stand on the same footing.

2. *The Profits Permitted by the Bonus-for-Savings Provisions Were Unreasonable at the Time of Execution.*—Bethlehem's position, as we understand it, is that the reasonableness of the contracts must be judged as of the time they were executed,

that so viewed the profits permitted by the contracts were not unreasonable, and that payment according to their terms therefore cannot now be deemed inordinate. Relying on the Master's findings, Bethlehem contends that the bonus-for-savings form of contract "was a desirable one from the standpoint of both parties" and preferable to a straight cost-plus agreement because of its incentive for efficiency, that the estimates of base cost in the contracts were reasonable estimates of reasonable cost and were "liberal" in order to provide the contractor an incentive to cut under them as both parties understood, and that the contracts were productive of the results intended because the total cost to the Government was less than that paid to other shipbuilders under lump-sum and cost-plus contracts (Brief in Opposition, pp. 19–21).

The argument is without substance. As previously pointed out (*supra*, p. 50), the Master's finding that the estimates of base cost in the contracts were reasonable was based on the evidence that it was impossible to make an accurate estimate under the then prevailing conditions and that reasonable men might therefore differ in their estimates as much as 75 percent. Because the factors affecting cost were unpredictable it was within the contemplation of the parties that the actual cost might fall far below estimated cost by reason of the non-occurrence of the numerous and large cost increases assumed in making the estimates (see *supra*, p. 7; R. 1445–1447). The contracts, as construed by

Bethlehem, were thus deliberately designed to give Bethlehem in that event an enormous profit without any increase in efficiency due to its efforts and even though its performance would differ in no way from what it would have been obligated to render under a straight cost-plus contract with a fee of only 10 percent of actual or estimated cost. In these circumstances it can make no difference whether the profits actually earned were fixed at that amount in the contract or are the result of subsequent contingencies within the contemplation of the parties and due to events in no way related to the alleged incentive.

In this connection it is significant that the estimates when made were such as to offer a "reasonable probability" of a net earning of 10 percent "after paying all War and Excess Profit taxes" (R. 1808, 1377–1379, 1438–1441), which taxes then amounted to about 60 percent (R. 1365), or a profit of approximately $30,000,000. Indeed, Bethlehem now points to this contemporaneous representation as conclusive evidence that the profits now claimed were within the contemplation of the parties from the beginning without any requirement of a showing of increase of efficiency by reason of its own efforts. It is unnecessary to labor the point that Bethlehem's position is striking confirmation of our claim of unconscionability. It insisted, in other words, upon contracts which, involving no risk, would probably result in profits sufficiently large to leave it $12,000,000 untouched by the taxation which the rest

of the country bore as its contribution to the prosecution of the war. In seeking to show that the bonus-for-savings provisions required no showing of an increase in efficiency, Bethlehem succeeds only in demonstrating that, if it is right, the contracts were unconscionable at the time of their execution. For Bethlehem at that time expected, and is now claiming, more than twice the normal compensation for a performance which it would have been obligated to render on a straight cost-plus contract.

3. *Prices Paid Other Shipbuilders.*—In order to give some semblance of plausibility to its position, Bethlehem contends that the profits permitted by the bonus-for-sav ..gs provisions are not unreasonable because it now appears that the cost to the Government of the vessels constructed by Bethlehem was less than the price which the Fleet Corporation paid to other shipbuilders for vessels built under lump-sum and straight plus contracts. Since the cost of the vessels constructed by Bethlehem would have been the same if the contracts had contained no bonus-for-savings clause (R. 678), it is obvious that the comparison invoked provides no justification for compensation of more than twice the accepted standard for the services which Bethlehem contracted to and actually did render.

Under normal conditions, the prevailing prices paid other shipbuilders might well be a fair measure of the value of Bethlehem's services. In a free market the operation of the ordinary forces of sup-

ply and demand would presumably work to exclude high-cost shipbuilders and the prevailing prices would, therefore, constitute a fair measure of value. But in war-time this assumption is completely without foundation. The Government's demand is unlimited and cannot be qualified by considerations of price. The Government needs the services of the highest cost producers as well as those of the efficient. Marginal or sub-marginal producers who could not possibly find a demand for their services in normal conditions must be employed by the Government for their services without consideration of cost. In these circumstances, the cost of others cannot possibly be accepted as a measure of the fair value of the normally efficient producer. In fact, this was plainly recognized in all the war-time contracts made on a cost basis, the parties agreeing that compensation should be based on the contractor's costs, not on the costs of others or on "prevailing" prices determined by the costs of others.

In the second place, the comparison with other prices is wholly misleading in point of fact. The Master's findings (R. 554, 568), on which respondent relies, were based on Exhs. B3 and B4 and the testimony of Brown who prepared or was familiar with them (R. 1094–1125, 1136–1140). Even if it be assumed that the shipbuilding experience of the other contractors was comparable to

that of Bethlehem, Exhibit B3 shows that most of the vessels which Brown considered were built under lump-sum contracts in which the contractor took the risk of loss, and that only a small proportion were constructed on a cost-plus basis.[18] It is obvious that lump-sum contracts in which the contractor assumes the risk of a rise in costs cannot be compared with one in which the contractor took no risk at all. Brown made no comparison between the cost of the vessels constructed by Bethlehem and those constructed under cost-plus contracts, but averaged the cost of all vessels of a class comparable to a class constructed by Bethlehem (R. 1114). In addition, he admitted that individual comparisons were feasible only in the case of two of all of the vessels, and made no effort to exclude capital contributions to other builders, as he did for Bethlehem. (R. 1105, 1096–1104, 1109).

In determining the amounts of profits which can lawfully be exacted from the Government in wartime contracts, regard should be had to the extent of the risk assumed by the contractor and the necessities of the Government. In our system, profits, as the courts have recognized, are a reward for the assumption of risk. *Cf. Rishel* v. *Pacific Mutual Life Ins. Co.*, 78 F. (2d) 881 (C. C. A. 10);

[18] Exhibit B3 sets out the cost of shipbuilding to the Government during the war period, on work undertaken by contractors other than Bethlehem. Only 17 of the contracts were cost-plus contracts, while 76 were undertaken for a contract price and presumably were of the lump-sum type.

Dingler v. *Ritzius,* 42 Idaho 614; *Burmeister* v. *Hamann,* 208 Iowa 412; *Yankey* v. *Clark,* 224 Ky. 346. Contractors accepting a fixed price under lump-sum agreements should accordingly be entitled to a greater percentage of profit than those who, like Bethlehem, take no risk of loss whatever.

Under any view, then, Bethlehem has secured inordinate profits, which at the time of execution of the contracts, were within their contemplation.

B. THE AGREEMENT WAS EXACTED THROUGH DURESS

Under these circumstances, the bonus-for-savings provisions of the contracts are void and unenforcible. The first reason is based upon the circumstances under which Bethlehem exacted them. The Fleet Corporation, we shall show, had no choice but to accept whatever terms Bethlehem insisted upon, however harsh they might be, and in fact accepted them only because it had no alternative. Such an agreement between private individuals would be condemned on familiar principles of duress. But, if such be necessary, the courts should establish stricter rules than those applicable to a free market place in enforcing the contracts which the Government, without alternative choice, has been forced to make during a grave national emergency.

1. *There Was Duress in Fact.*—The war emergency of 1917 and 1918 demanded the speedy construction of as many vessels as was possible, both

for the transportation of troops and for the carriage of needed supplies (R. 539, 574–575, 1362). The full use of the facilities of Bethlehem, the largest shipbuilding concern in the world, was vital to this phase of the prosecution of the war; and, although theoretically empowered to commandeer these facilities, the Government, as the Master found, was actually faced with the practical alternative of securing an agreement from Bethlehem to construct the ships, or of doing without them (R. 539). Moreover, in the words of the chief representative of the Fleet Corporation, "There was no time for haggling" (R. 1520). Of this national emergency, of the urgent needs of the Fleet Corporation, and of Bethlehem's indispensability, respondents' agents were well aware (R. 575, 1035).

In these circumstances, Bethlehem's attitude was one of "commercial greed but little diluted with patriotic feeling" (R. 2327). It insisted adamantly upon the half-savings type of contract, and would take no other (R. 627, 642–3, 738, 1188, 1355, 1425). Its agents determined, in advance of the final negotiations, not to go below the figures of estimated cost prepared by its own agent, Brown (R. 528, 642, 1090, 1377). Faced with such iron demands, the representatives of the Fleet Corporation were, in the words of the Special Master, "obliged to take the contracts" on the basis proposed, "although resenting the commercial atti-

tude of Bethlehem and condemning Bethlehem for demanding its 'pound of flesh' " (R. 539).[19]

[19] Respondents attempt to deny the harshness of the alternatives presented to the Government by referring (Brief In. Opp. p. 20, fn) to a letter of January 3, 1918, sent by Bethlehem to Mr. Charles Piez, Vice-President and General Manager of the Fleet Corporation, stating that Bethlehem was prepared "to accept the order * * * on such terms as may be personally determined by Mr. Charles Piez * * *." The Special Master, the District Court, and the Circuit Court of Appeals, however, agreed, upon all the evidence, that the Government had no real freedom to reject Bethlehem's terms (R. 538–539, 738, 741, 2328).

No other view is permissible on the record. Powell's testimony makes it very clear that the purported offer was not an agreement to submit to any arbitrary price which might be set but contemplated only a genuine judgment based on his own study and judgment (R. 1362, 1407–1408). And from Powell's testimony, it is equally clear that Piez could obtain no facts on which to base a judgment save, as Powell stated, such facts as were submitted to him by Bowles and Powell and the prices "other people" were charging (R. 1408). The Fleet Corporation representatives had no knowledge of Bethlehem's costs and never submitted estimates of their own (R. 644). Indeed, Piez was accustomed to rely on the judgment of Powell, with whom he was "very close," in shipbuilding matters (R. 646). It will be recalled that the break-down submitted by Bethlehem in support of its estimates was merely "an arbitrary division of the total cost estimate" (R. 641), which could not have aided Piez in arriving at any judgment, and the prices paid under the few other contracts with other shipbuilders were no measure of the reasonableness of Bethlehem's costs. See *supra*, pp. 60–63. Moreover, as Powell well knew (R. 1405) Piez was appointed General Manager of the Fleet Corporation only a few weeks before the negotiations of these agreements (R. 1405, 1495), and had had no prior experience in the shipbuilding business (R. 527, 646). It was therefore impossible for Piez to make an independent determination of the

The subsequent contracts, negotiated shortly after those which were awarded on January 5, it should be noted, were imposed upon the Fleet Corporation under precisely the same compelling circumstances. Neither the Master nor the Courts below made any distinction between the earlier and later contracts in their findings of compulsion (R. 538–539, 738, 741, 2328).

The facts of the record and the findings of the Master and both courts below abundantly demonstrate that Bethlehem was in a position where it could exact whatever price it chose. The Fleet Corporation, faced by the overriding necessity of obtaining ships, could not refuse to enter into the contracts, however exorbitant Bethlehem's demands might be.

This, the Court will note, is a situation quite different from that of the private concern which seeks the construction of ships, or the performance of other business contracts. There the need for the ships is purely economic; if the contractor demands too much, the owner will have no desire for the ships, for his opportunities of profit will vanish as the cost of the ships goes up. There is then, an automatic limit to the price upon which the contractor can insist; and a real choice in the owner to refuse to enter into the contract. But when the life of the

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reasonableness of Bethlehem's estimates of cost. In fact, Piez awarded the first seven contracts on January 5, the same date on which Bowles and Radford made their recommendation to accept Bethlehem's proposals (R. 1920–1925).

nation is at stake the Government officials charged with the responsibility of securing necessary ships and material cannot refuse to enter into contracts simply because the demands are unreasonably high. The analogy, then, is not with a private concern faced with price demands which are unreasonably high, but with a private person faced by circumstances which in fact make refusal impossible. In such cases, as in this, the other party to the contract has an unqualified power to exact such terms as he chooses. If he uses this power to take advantage of the necessities of the helpless party, it would be a travesty upon justice to apply to this transaction the ordinary rules of contract law, which assume the existence of a free market in which both buyer and seller have freedom to refuse. For this reason, the common law has long recognized that the principles of contract law have only a limited application in case of duress, such as that shown in the execution of the contracts now in question.

2. *The Resulting Contracts Are Enforcible According to Their Justice and not Their Terms.*—The courts are not required to enforce contracts executed under such conditions regardless of their terms. It is true that the Anglo-American law of private contracts, unlike the civil law (see Dawson, *Economic Duress and the Fair Exchange In French and German Law* (1937), 11 Tulane L. Rev. 345) does not often find duress in a purely economic

compulsion to accept stringent terms. 5 Williston, *Contracts*, § 1608. But even here the courts have frequently refused to enforce agreements entered into only because of the necessities created by a grave emergency.

While mere vexation and annoyance or force of circumstances do not ordinarily constitute duress (5 Williston, *Contracts*, § 1608; cf. *Silliman* v. *United States*, 101 U. S. 465; *French* v. *Shoemaker*, 14 Wall. 314; *United States, Lyon, et al.* v. *Huckabee*, 16 Wall. 414) "it seems clear that if such circumstances were known and advantage taken of them by the other party a degree of pressure which would not ordinarily amount to duress, might have such coercive effect as to invalidate the transaction." 5 Williston, *Contracts*, § 1608. The "moral compulsion" (*The Elfrida*, 172 U. S. 186, at 197) resulting from a calamity or grave emergency has often been held to constitute legal duress.

While courts of admiralty have enforced contracts made for salvage service and salvage compensation where the salvor has not taken advantage of his power to make an unreasonable bargain, "they will not tolerate the doctrine that a salvor can take the advantage of his situation, and avail himself of the calamities of others to drive a bargain; nor will they permit the performance of a public duty to be turned into a traffic of profit." *Post* v. *Jones*, 19 How. 150, 160; *The Tornado*, 109 U. S. 110, 117; *The Elfrida*, 172 U. S. 186, 193–194, 197. As this Court said in *Post* v. *Jones*, *supra*, in set-

ting aside an unequal sale of the cargo of a vessel stranded thousands of miles from port to the owners of nearby vessels in the same fishing fleet (p. 159):

> The contrivance of an auction sale, under such circumstances, where the master of the Richmond was hopeless, helpless, and passive—where there was no market, no money, no competition—where one party had absolute power, and the other no choice but submission—where the vendor must take what is offered or get nothing—is a transaction which has no characteristic of a valid contract.

In such circumstances this Court has recognized that the usual standards of duress are inapplicable and that "in passing upon the question of compulsion the fact that the contract was made at sea, or under circumstances demanding immediate action, is an important consideration." (*The Elfrida*, 172 U. S. at 197). Cf. *Magnolia Petroleum Co.* v. *National Oil Transport Co.*, 281 *Fed.* 336, 339, 344, modified, 286 Fed. 40, 42 (C. C. A. 5). On like principle it has been held that a lease executed by a tenant at will, doubling the rent during a period of housing shortage, could be set aside for duress where the tenant agreed to the increased rental only because of the landlord's threat of eviction during the tenant's illness. *Sylvan Mtge. Co.* v. *Stadler*, 113 Misc. 659; Restatement of Contracts, sec. 493, Illus. 16.

These examples are but specific instances of a more pervasive rule of general contract law that duress exists whenever the consequences of resisting economic pressure to accept an unequal agreement would be catastrophic to the individual and injurious to social interests deserving of protection. The rule should be enforced with redoubled solicitude in the case of contracts entered into by the Government under the compulsion of an overriding national emergency.

The contracts with Bethlehem were urgently necessary because the ships were required for the the successful conduct of the war. Upon the outcome hung the security and welfare of the whole country. It would have been impossible to forego Bethlehem's facilities and organization, and Bethlehem did not hesitate to take full advantage of its position. Certainly, no court would countenance an agreement by a drowning man to give an exhorbitant sum to one bargaining over the rescue. Even more clearly the courts should not require the nation to accede to exorbitant demands or go without the necessary instruments of defense.

The contracts should, therefore, be invalidated because of duress even though it be assumed that Bethlehem was legally and equitably entitled to refuse to serve the Government save on its own terms. Bethlehem, however, enjoyed no such freedom. The Emergency Shipping Fund Act of June 15, 1917, c. 29, 40 Stat. 182–184, expressly author-

izes the President to place orders with any person for "such ships or materials as the necessities of the Government, to be determined by the President, may require during the period of the war, and which are of the nature, kind, and quantity usually produced or capable of being produced by such person," made compliance with such orders obligatory, and provided that in the case of a refusal to comply "at such reasonable price as shall be determined by the President," the President could take possession of such persons, plants, and materials. The duty to accept any order for ships was obligatory in terms and while the duty to accept at such "reasonable price" was not made so in express terms, such is the plain implication of the statute. But compare R. 597–598. The President, pursuant to the statute, delegated his authority to the Fleet Corporation (R. 1943–1946; *Emergency Legislation*, G. P. O., 1918, pp. 173–174). In these circumstances, if Bethlehem had refused to accept an order of the Fleet Corporation at the usual reasonable fee, and had insisted on a bonus-for-savings clause as additional compensation for providing the identical service as under a straight cost-plus basis, it cannot be doubted that any contract executed with Bethlehem because of the inadequacy of the alternative of condemnation could be set aside for duress. It is settled that where a public utility, obligated by statute or contract to serve at stated or reasonable and nondiscriminatory rates, exacts

additional compensation under an agreement obtained by a threat of cutting off an essential service, the agreement may be set aside and any excessive payment recovered. *City of Chicago* v. *N. W. Mutual Ins. Co.*, 218 Ill. 40, 43; *Chicago and Alton R. R. Co.* v. *C., V. & W. Co.*, 79 Ill. 121, 130; *Mobile & Montgomery Ry. Co.* v. *Steiner, McGehee & Co.*, 61 Ala. 559, 595; *Panton* v. *Duluth Gas & Water Co.*, 50 Minn. 175; *Westlake & Button* v. *City of St. Louis*, 77 Mo. 47; *Gess* v. *Nampa & Meridian Irrig. Dist.*, 38 Idaho 189; 5 Williston *Contracts*, §§ 1606–1607, 1618. In such cases, all the courts agree, judicial proceedings to compel performance of the duty are inadequate because the need for the service is immediate. In this case, the remedy of condemnation, as the Master and the courts below found, was inadequate because Bethlehem's organization was essential to the success of the shipbuilding program. And it is immaterial that the Fleet Corporation did not formally command Bethlehem to construct ships at reasonable prices. Bethlehem had given anticipatory notice that it would refuse to serve except on its own harsh terms. The Fleet Corporation's only remedy, as the Master and the courts below found, was condemnation, and this was inadequate.

There are thus strong reasons of public policy to prevent enforcement of contracts exacted by trading on the extraordinary necessities of the Government in time of war. This policy has been given explicit recognition since at least the time

of the Revolutionary War.[20] A similar policy has found expression in the taxation of excess profits during war-time, and in such measures as the various acts (C. 95, 48 Stat. 505, C. 812, 49 Stat. 1926, C. 35, 53 Stat. 560) limiting profits on sales of naval vessels and war planes to the Government, even during peacetime.

It follows, then, that the private law doctrine of duress is itself sufficient to show that contracts such

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[20] See the Resolution of December 27, 1776, of the Continental Congress conferring plenary powers upon Washington, and giving him authority, *inter alia*, "to take, wherever he may be, whatever he may want for the use of the army, if the inhabitants will not sell it, allowing a reasonable price for the same" (4 Jour. Cont. Cong., p. 1045); and the Resolution of November 30, 1778, providing as follows:

"*Resolved*, That in all cases where forage is wanted for the troops, and cannot be purchased by the commissaries at reasonable rates, application be made to the executive or legislative authority of the State wherein the forage is required, or to some person or person properly authorized by them for that purpose, for their interposition and assistance in procuring the necessary supplies:

"That it be recommended to the governments of the states, wherein the army or any detachment or part thereof now is, or hereafter shall be, to take such measures, in aid of the forage masters, who shall first use every endeavour to purchase the same, for the procuring sufficient quantities of forage, at reasonable rates, as shall, in their opinion, be effectual, and most likely to procure a speedy supply, (12 Jour. Cont. Cong., p. 1117.)"

See also *e. g.* Laws of Connecticut, 1778, p. 503, 507; Laws of Connecticut, 1779, p. 511; Laws of Maryland, 1777, ch. IV. These resolutions and statutes are reprinted in the volume of *Emergency Legislation* published by the Government Printing Office in 1918, pp. 207, 223, 241–4, 299.

as those which Bethlehem exacted are void and unenforcible because secured by duress, and that major reasons of public policy would in any event require the same result here, where the bonus-for-savings provisions were exacted by the force of the national emergency.

3. *Bethlehem Can Recover Only Its Fixed Fee.* Since the contracts were exacted by duress, then, they must be enforced according to their justice, and not according to their terms. It is settled that *quantum meruit* is the measure of recovery where a contract is set aside for duress, fraud, or illegality. *Crocker* v. *United States,* 240 U. S. 74, 81; *Clark* v. *United States,* 95 U. S. 539, 542–543; *Hume* v. *United States,* 132 U. S. 406; cf. *Pan American Co.* v. *United States,* 273 U. S. 456, 505–506.

The profits which accrue to Bethlehem under its fixed fee, amounting to over 10 percent of the actual cost, are a liberal allowance in *quantum meruit* and represent the maximum profit which was ordinarily paid under wartime contracts involving no risk of loss or special efforts (see *supra,* pp. 54–56, 60–63).

The respondent has suggested that the courts cannot be called upon to fix the measure of recovery permissible on war-time contracts. But the courts, of course, are constantly required to fix the value of services where the letter of the contract must be disregarded because of duress or other reasons, and

where the contract must, therefore, be enforced according to its justice. The conclusive answer, however, is that the measure of recovery on a cost-plus basis alone has been fixed by the practice in the market place and the courts are not required to substitute their own judgment for that of the business community.

In order, therefore, to receive payment beyond its fixed profit, Bethlehem must prove that it rendered some service, the value of which is reasonably measured by the compensation claimed. This, we submit, Bethlehem has not proved and cannot prove. As we have shown under Point I, the difference between the estimated and actual cost of the vessels was not due to any increase of efficiency brought about by Bethlehem's efforts. The only increase of efficiency shown was in labor costs and this increase occurred after and was due to the restoration of peace. In short, the performance which the Government received was no different from that to which it was entitled under a cost-plus contract without an additional bonus for "savings," and the Master so found (R. 678).

C. THE CONTRACTS ARE UNCONSCIONABLE

If the bonus-for-savings provision is construed to permit Bethlehem to participate in "savings," no matter how caused, it is unenforcible in this case for the further reason that it operates to confer

inordinate profits upon Bethlehem as an unconscionable reward, not for efficient service but instead for its ruthless bargaining with a purchaser unable to refuse.

It needs no argument to show that the profits which Bethlehem claims are staggering in amount (*supra*, pp. 13, 52–53). It should be emphasized, however, that our claim does not rest simply upon the fact that Bethlehem under the bonus-for-savings provision would receive unduly large profits. We have no doubt that the transactions of the commercial world and the history of government contracting each contain many examples of equally profitable contracts. But we do insist that riskless profits of more than 22 percent are unconscionable when they are secured through a bald refusal to perform services indispensable to the nation unless there be held open the opportunity for profits more than twice the normal profits for similar services. In other words, even if Bethlehem's exploitation of its country's need should not amount to technical duress, it is a factor which must be given full weight in the inquiry as to whether the contracts are unconscionable through giving inordinate profits.

We have shown that Bethlehem, trading upon the Government's necessities, exacted contracts which through their bonus-for-savings provisions produced inordinate profits. It is clear enough that in these circumstances the bonus-for-savings provisions are unenforcible.

1. The courts have long refused, whether at law or in equity, to enforce contracts found to be unconscionable, even in the absence of fraud. *Scott* v. *United States,* 12 Wall. 443, 445; *Hume* v. *United States,* 132 U. S. 406; *Burke & James, Inc.* v. *United States,* 63 C. Cls. 36; *Stiefler* v. *McCullough,* 97 Ind. App. 123. In the leading case in the United States, *Hume* v. *United States, supra,* the plaintiff agreed in writing to sell to the Government some shucks at 60 cents a pound when the market price was only 1¾ cents a pound. The shucks were delivered and consumed, and plaintiff's demand for payment of the contract price being refused he brought suit. Both the Court of Claims and this Court awarded only the market price of the shucks. Both courts held that the price demanded was unconscionable, and that the judicial system could not be used to enforce the contract. The opinion of this Court quotes and relies upon the rule as stated in *Scott* v. *United States, supra,* that—

> If a contract be unreasonable and unconscionable, but not void for fraud, a court of law will give to the party who sues for its breach damages, not according to its letter, but only such as he is equitably entitled to. *James* v. *Morgan,* 1 Levinz, 111; *Thornborow* v. *Whitacre,* 2 Lord Raymond, 1164; *Baxter* v. *Wales,* 12 Massachusetts, 365.

In *Burke & James, Inc.* v. *United States,* 63 C. Cls. 36, discussed in detail, *supra,* pp. 46–48, the court

held that one ground for denying enforcement to a "bonus-for-savings" provision was that recovery of the sum claimed would result in the award of profits "grossly exorbitant and unreasonable" (p. 58). The court stated and quoted from its opinion in the *Hume* case, as follows (pp. 58–59):

> 'The fraud, if it is necessary to suppose any in this case, consisted in afterwards taking advantage of the defendant's ignorance or mistake, and of attempting to enforce the performance of a contract, such, as Lord Hardwicke expresses it, "as no man in his senses would make or as no honest man would come into." These citations are sufficient to show that in suits upon unconscionable agreements the courts of law will take the matter in their own control and will, without the intervention of courts of equity, protect the parties against their enforcement. If it be so in suits on contracts between private parties who act by and for themselves, how much more is it so in suits on agreements by the United States, acting always through public officers, who are mere agents, required to act in good faith toward their principal according to the laws of the land, as everybody dealing with them are bound to know.'

See also *Beard* v. *United States*, 3 C. Cls. 122; *Bassick* v. *Aetna Explosives Co.*, 246 Fed. 974.

Respondent contends and the court below held, however, that the only measure of unconscionability is that contained in the apothegm of Lord

Hardwicke in *Earl of Chesterfield* v. *Janssen*, 2 Ves. Sr. 125, 155, that those bargains are "inequitable and unconscientious bargains; and of such even the common law has taken notice" which are "such as no man in his senses * * * would make on the one hand, and as no honest and fair man would accept on the other."

Even if tested by this standard, Bethlehem's claimed profits are unconscionable. A Government representative "in his senses" might well have entered into these contracts at any price because of the war necessities. Even so, under the language of the dictum relied on, the contract may be condemned if in such circumstances "no honest and fair man would accept" the bargain. Indeed, as reported in 1 Wils. K. B. 286, at 295, 95 Eng. Rep. 621, 627, Lord Hardwicke's dictum speaks of a bargain which "no man in his senses would make, *or* as no honest man would come into" (italics supplied). Cf. *Hume* v. *United States*, 21 C. Cls. 328, 331. See, also, a third report of the opinion in 1 Atk. 301, at 352, 26 Eng. Rep. 191, 224. The conclusive answer, however, is that the dictum was not intended to have and never has been given application where unfair advantage has been taken of another's necessities. Lord Hardwicke distinguished four situations in which equity would presume fraud. The first class is that in which fraud is suggested from "the intrinsic nature and subject of the bargain itself", and it was to this class only

that Lord Hardwicke applied the description relied on by respondents. 2 Vesey Sr. at 155. He added as a separate distinct class that where fraud is presumed "from the circumstances and condition of the parties contracting * * * to prevent taking surreptitious advantage of the weakness or necessity of another; which knowingly to do is equally against conscience as to take advantage of his ignorance: a person is equally unable to judge for himself in one as the other" id. at 155–156. The other two classes are not material to the discussion here.

The distinction has been consistently recognized in the decisions, although the American courts will not presume that an unfair advantage of disabling necessity has been taken in the absence of proof. Where the only ground relied on to invalidate the contract is the inequality of the bargain (or inadequacy of consideration), the disparity must be so gross that the courts will presume fraud. Such was the situation in the *Hume* case. But where it is shown that advantage has been taken of another's necessities a much smaller degree of unfairness is enough. The courts have frequently set aside salvage agreements where the force of circumstances was insufficient to constitute compulsion, but the salvor took advantage of distress to exact an agreement for compensation twice or more the fair value of its services. *The Don Carlos,* 47 Fed. 746 (N. D. Calif. 1891); *The Young America,* 20

Fed. 926 (D. N. J. 1884); *Brooks* v. *Steamer Adirondack*, 2 Fed. 387 (S. D. N. Y. 1880); *Magnolia Petroleum Co.* v. *National Oil Transport Co.*, 281 Fed. 336 (D. Texas); *The Theodore*, 1 Swabey, 351. In *The Young America*, a vessel exhibited a signal for a tug when a dangerous fire broke out in the near vicinity, causing great excitement and fear on the vessel. The tugmaster demanded $1,000 for his services, although, as the court found, there was no risk to it and its services were worth only $300. In *The Don Carlos*, the salvor demanded $10,000 for services found to be worth only $5,500. In the *Brooks* case, the salvor demanded $4,000 for services found to be worth only $1,500. The agreements in these cases were cited by this Court in *The Elfrida*, 172 U. S. 186, at 196, as illustrative of contracts invalidated because of unconscionability. In the *Brooks* case, the court said (p. 392):

> It is not because the bargain proves to be a hard one that the courts of admiralty set aside such a stipulation. It is because it is obviously unjust, and the parties do not deal on equal terms. The apprehension expressed by the learned counsel for the libellant, that the setting aside of such contracts will tend to discourage the rendering of salvage services, is unfounded so long as the courts award, as they endeavor to do in every case, such as a sum as will be not only a quantum meruit for the time and labor employed in the service, but a reliable reward for the

> assistance rendered and the perils voluntarily incurred. If the amount agreed upon exceeds somewhat the accustomed measure of this liberal reward, it will not be disturbed, if deliberately and understandingly assented to, without the judgment of the promising party being overborne by the distress in which he is placed; but where the amount agreed upon is more than double, or, as in this case, nearly treble, that measure of liberal reward, the upholding of the contract would invite rapacity, and tend to prevent the rendering, upon just and proper terms, of salvage service under circumstances in which it is for the interests of commerce that it should be offered and not refused.

The principle is one of general application. Contracts for the purchase of land from a vendee of intemperate habits and in financial straits have been held unconscionable where price paid was only one-half or one-third the fair value: *Matthis* v. *O'Brien,* 137 Ky. 651, 658; cf. *Beard* v. *Campbell,* 2 A. K. Marshall (Ky.) 125, 126–127; *Johnson* v. *Woodworth,* 134 App. Div. 715; *M'Kinney* v. *Pinckard's ex'or,* 2 Leigh (Va.) 149, 156. And agreements to loan money to persons in financial distress on condition that the borrower purchase land at a price twice or more its fair value have likewise been invalidated as unconscionable without regard to the analogy of usury. *Administrators of Hough* v. *Hunt,* 2 Ohio 506; *Butler* v. *Duncan,* 47 Mich. 94; *Musselman* v. *Knott;*

7 Ky. L. Rep. 380; cf. *Bither* v. *Packard*, 115 Me. 306; *Stiefler* v. *McCullough*, 97 Ind. App. 123, 130–131; see Note (1935) 35 Col. L. Rev. 1090, 1096.

Bassick v. *Aetna Explosives Co.*, 246 Fed. 974 (S. D. N. Y.), a case between private parties, dealt with a situation not markedly different than that now at bar. The court said (pp. 992–993):

> But I go further. In my opinion, if it were to be found that the board knew all the facts, they had no power to authorize an agreement so disproportionate as to be unconscionable * * *.
>
> * * * * * *
>
> Under this so-called "overage" arrangement, Bassick was to receive $1,800,000; i. e., 31 per cent. in round numbers, on a sale of $5,800,000—an amount obviously so far above anything which can be called reasonable, or even liberal, in the circumstances, as to characterize the agreement, within the famous observation of Lord Hardwicke in *Earl of Chesterfield* v. *Janssen*, 2 Ves. Sen. 125, 155 * * *.

The principle applies with even greater force to contracts with the Government to supply war necessities. The power of eminent domain exists, it is true, to protect the Government from unreasonable demands, but this power together with the statutes previously cited (*supra*, p. 71) explicitly evidence a policy that the Government should not be required to pay more than a reasonable price for

war supplies. Since neither expedient could assure the service of an unwilling organization, as the Master found (R. 539), they are useful here not as a means by which the Fleet Corporation could have escaped its predicament but as a policy which must guide the judicial scrutiny of the contracts. See the cases cited *supra*, p. 72. In brief, while the law tolerates some hard bargains between private individuals, it condemns any effort to take advantage of the Government's wartime necessities.

As was said in *United States* v. *A. Bentley & Sons Co.*, 293 Fed. 229, 236 (S. D. Ohio), "The contract being made when an emergency existed and the defendant being required to report and account to and thus to deal with a public officer, the fairness of its transactions will be more rigidly scrutinized than if it had been dealing with a private individual * * *." See also *Beard* v. *United States*, 3 C. Cls. 122, 129; *Hume* v. *United States*, 21 C. Cls. 328, 331; *Mann* v. *United States*, 3 C. Cls. 404, 411.

Applying these settled principles, it seems clear that straight cost-plus contracts for construction of vessels in terms providing a fee of 20 percent or 25 percent of actual or estimated cost would be plainly unconscionable. Bethlehem's performance was no more than that due under a straight cost-

plus contract, and the contracts as construed by Bethlehem required, at the time of their execution, no more. They stand, therefore, on the same footing. A small departure from the norm of 10 percent might be justified but a profit more than twice the usual amount has no discernible relation to the value of the service rendered and, in the absence of some explanation, can only be deemed an unconscionable result of trading on the Government's necessities.

D. THE GOVERNMENT AGENTS WERE WITHOUT AUTHORITY TO ENTER INTO THE CONTRACTS

We have shown that the contracts, construed to permit Bethlehem to participate in "savings" however caused, are void and unenforcible because (a) they make a gift of Government property; (b) they were exacted under duress; and (c) they are unconscionable through giving Bethlehem inordinately large profits. Stated otherwise, the contracts are void and unenforcible because the Government officers had no authority to bind the Government to such agreements. *Hume* v. *United States,* 132 U. S. 406 at 414–415; *Burke & James, Inc.* v. *United States,* 63 C. Cls. 36 at 56–57; *Beard* v. *United States,* 3 C. Cls. 122, 128.

The conclusion seems incontestible, once any of these grounds of invalidity be established. It may, however, be appropriate to add a word directed to the situation where the contracts would be placed

at about the border-line of any one of these categories. It might be suggested that the courts should follow the administrative judgment of the contracting officers of the Fleet Corporation if there be room for differences of opinion as to the reasonableness of the contracts.

The suggestion would, in the first place, be inapplicable to the case at bar. For, as we have shown, the duress and the inordinate nature of the profits are of the first magnitude. In the second place, any such view would be the adoption of a self-defeating formula. We do not attack the administrative judgment of Piez, Bowles, and Radford. We insist, rather, that they were faced by insuperable obstacles in their negotiations with Bethlehem. They were charged with the duty of getting ships upon which the national existence might rest. They had to have ships; they could not refuse to deal with Bethlehem. It is idle to speculate whether shrewder or more determined men might somehow have overcome this tremendous negotiating advantage placed in the hands of Bethlehem. The administrative judgment which the courts must respect is the informed judgment of experts; it is not a decision resulting from the helplessness of ordinary men faced by a contractor determined to capitalize to the full on his country's need.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgments below should be reversed.

Respectfully submitted.

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430648—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 8

UNITED STATES OF AMERICA, PETITIONER

v.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY

No. 9

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE UNITED STATES AND THE UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION

I

ITEMS NOT IN DISPUTE

Respondents' brief (pp. 16–17) correctly states that $1,514,994.93 of the judgment awarded Beth-

lehem in the action at law is concededly due under contracts other than those now under attack. That amount may, therefore, properly be deducted from any recovery to which petitioners may be held entitled.

II

THE ISSUES PRESENTED ARE PROPERLY BEFORE THE COURT

Respondents' brief (pp. 3–7) asserts that none of the grounds upon which petitioners now seek relief was within the issues tendered by the pleadings. The claim is that the Government's original pleadings were predicated entirely upon a charge of fraud, and that no contention was made that the payment of the bonus for savings to respondents was unconscionable in the circumstances, that the Government accepted the contracts under duress, or that the bonus provisions permit respondents to recover only for savings resulting from extra efforts or increased efficiency.

There can be no doubt that the contentions advanced by the Government are properly before the Court for determination.

(a) *Unconscionability.*—Our contention that it would be unconscionable to permit respondents to recover the grossly excessive profits arising out of the bonus-for-savings clause is adequately described in substantially the same language both in the Government's affidavit of defense to the suit at law (R. 398) and in the Government's bill

of complaint in equity (R. 1960–1961). The affidavit of defense avers that (R. 398)—

> whatever provisions might be contained in the said contracts to the contrary notwithstanding, the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., was entitled to receive from the United States only a fair and reasonable profit upon the work done, and that any term, covenant, or provision in any such contract for the payment of any sum in excess of a fair and reasonable profit upon the fair and reasonable cost of the work was and is void and uninforceable.

The opinion of the District Court (R. 738) summarized the Government's contention on this point as follows:

> The contract, although without any element of fraudulent deception in its making, in its performance results in profits to the contractor, so inordinately large as to be extortionate and to render the contract unconscionable and thus unenforceable in Equity or at Law.

The court then stated (R. 738):

> This is the real cause of action set up in the Bill and the real defense interposed to the action at law. * * *

The argument as to unconscionability was treated at some length in the Master's report (R. 539–540), the opinion of the District Court (R. 738–742), the opinion of the Circuit Court of Appeals

(R. 2328–2329), and the briefs of both parties in the District Court and the Circuit Court of Appeals.[1]

(b) *Duress.*—The Government's argument that Bethlehem's insistence that the Government accept this form of contract under the conditions existing in 1917 and 1918 brought the case within the common law doctrine as to contracts made under duress is based upon the facts alleged in the pleadings (R. 395–396; 1957–1959), brought out at the trial, and described in the Master's report (R. 539) and the opinion of the Circuit Court of Appeals (R. 2323, 2327–2328). These facts are in substance the same as those supporting the argument that enforcement of the contracts is unconscionable. The close relationship between the two propositions appears from the illustration which the District Court viewed as analogous to the Government's position on unconscionability, that of a drowning man who contracts to pay an inordinate reward to a rescuer (R. 738). The illustration is, of course, a typical case of a contract unenforceable because made under duress.

(c) *The construction of the contract.*—Although there are general allegations that any term of the

[1] See the Government's brief in the District Court (pp. 95–108), Bethlehem's brief in the District Court (pp. 90–108), the Government's brief in the Circuit Court of Appeals (pp. 29–44), and Bethlehem's brief in the Circuit Court of Appeals (pp. 82–96).

contracts allowing Bethlehem more than a reasonable profit is void and unenforceable (R. 398, 1960–1961), our argument that the contracts permit bonus payments only for savings resulting from special effort or increased efficiency is not specifically set forth in the Government's pleadings. But the facts showing the intention of the parties in making the contracts were placed in evidence, and our position was squarely presented to and passed upon by the Master (R. 636–638), the District Court (R. 737), and the Circuit Court of Appeals (R. 2329–2330). Indeed, Bethlehem's brief in the Circuit Court of Appeals (p. 20) stated that "the same contention was made in the Court below and was repudiated both by the Master and by the Court." The point was considered at length in the briefs of both parties in the two lower courts.[2]

Respondents' brief nowhere states that they were in any way prejudiced or misled by the alleged variance in the Government's case, or that the points in question were not covered by the evidence, treated in the Master's findings, or considered in the opinions and briefs in the District Court and the Circuit Court of Appeals. Clearly the lengthy record in this case fully explores all

[2] The point was treated in the Government's brief in the District Court (pp. 108–118), in Bethlehem's brief in the District Court (pp. 28–55), in the Government's brief in the Circuit Court of Appeals (pp. 15–24), and in Bethlehem's brief in the Circuit Court of Appeals (pp. 19–43).

of the circumstances under which the contracts were made.

In this situation any possible variance between the allegations in the Government's pleadings and the proof and arguments presented in the lower courts would no longer be material. For the rule has long been "that no variance between the allegation of a pleading and the proofs offered to sustain it, shall be deemed material, unless it be of a character to mislead the opposite party in maintaining his action or defense on the merits."[8] *Nash* v. *Towne,* 5 Wall. 689, 698; *Standard Oil Co.* v. *Brown,* 218 U. S. 78, 84; *Reynolds* v. *Stockton,* 140 U. S. 255, 266; *Jennings* v. *Philadelphia,* 117 Pa. Sup. 462, 470; *Calvey* v. *Coyer,* 121 Pa. Sup. 504, 508–509. "In a contested case there must be an entire abandonment of the very substance of the dispute to which the defendant was summoned, and the substitution of another which he can not have anticipated, and which he had

[8] Since the time of their organization the Federal courts have been directed to give judgment according to law and the right of the cause. *Nash* v. *Towne,* 5 Wall. 689, 698; Act of September 24, 1789, c. 20, Sec. 32, 1 Stat. 72, 91. This principle is now embodied in two of the Federal Rules of Civil Procedure which provide specifically that "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings" (Rule 15 (b)), and that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings" (Rule 54 (c)).

no opportunity to meet" before a judgment is to be upset for variance. *Armand Co.* v. *Federal Trade Commission,* 84 F. (2d) 973, 974–975 (C. C. A. 2d), certiorari denied, 299 U. S. 597. And this Court has even held that it may properly consider issues never presented to the tribunal of first instance. *Hormel* v. *Helvering,* 312 U. S. 552; *United States* v. *Wilhams,* 278 U. S. 255; *Helvering* v. *Leonard,* 310 U. S. 80, 83.

III

THE GOVERNMENT'S POSITION

Respondent's brief (pp. 4–6) purports to state the Government's contentions in a manner which is both inaccurate and confusing. In order that the Court may be under no misapprehension as to what the Government's position is, our argument is summarized here.

1. It is unconscionable to permit the recovery, under the circumstances disclosed by the present record, of profits of 22 to 26 percent. The circumstances to which we refer are these:

(a) The contracts were cost-plus contracts under which respondents ran no risk of loss but on the contrary were guaranteed at least a 10 percent profit even before the savings clause in question became operative.

(b) The normal fair standard of profits on straight cost-plus contracts was known to be approximately 10 percent (see petitioners' main

brief, p. 54). The respondents thus are claiming more than twice the compensation generally regarded as fair for the riskless services rendered.

(c) The danger of increase of costs under a straight cost-plus contract involved no risk of loss to the contractor but only to the Government. Bethlehem, however, insisted upon the arrangement finally adopted and would accept no contract without the bonus-for-savings provision based upon liberally estimated cost (R. 624, 642–643, 738, 1188, 1355, 1425).

(d) In view of the need to produce ships as rapidly as possible to win the War and the fact that Bethlehem was the largest shipbuilder in the world, the Government was compelled to utilize Bethlehem's services and was not in the position of one freely bargaining on an open or competitive market. See petitioners' main brief, pp. 63–67.

(e) Bethlehem's object from the beginning was that the estimated cost would be sufficiently high to "offer a reasonable probability" of 25 percent profit, enough to leave a net of 10 percent after the payment of war and excess profits taxes amounting to about 60 percent (R. 579, Ex. G–104, R. 1808, 1437–1438).

(f) It was impossible at the time to make an estimate which was more than an "educated guess" (R. 619) as to the actual cost of construction, the range of possible error being concededly as much as 75 percent (R. 1349–1354, 1345, 1496–

1498, 1611–1613). Thus the estimates which Bethlehem insisted upon were "reasonable" only because an accurate estimate was impossible and hence almost any estimate would have been reasonable.

(g) None of the difference between estimated and actual costs in the performance of the contracts in question were shown to have resulted from any special efforts or increased efficiency induced by the making of this type of contract.[4] See petitioner's main brief, pp. 23–31.

2. Respondents' original offer indicated that the form of contract would give a "reasonable probability" (R. 579, 1808) of a 25 percent profit, and the estimates were concededly so liberal as that "savings" would certainly result under normally efficient operations. This corroborates the view, now supported by Bethlehem's brief (p. 15), that the bonus-for-savings clause, construed as Bethlehem claims it should be, amounts not to compensation for special efforts but to additional remuneration for the performance which a person would have been legally and morally obligated to

[4] If it is true, as Bethlehem contends and we deny, that it is now impossible to tell what the costs would have been if the bonus-for-savings clause "incentive" had not been included in the contracts, it is only because Bethlehem, by adamantly insisting on this type of contract, has made it so. As Bethlehem is thus responsible for the supposed difficulty, the burden of proving the impossibility and the consequence for it if it exists should rest on Bethlehem and not on its victim.

render under a straight cost plus 10 percent contract. In this view, the bonus operates merely as an incentive to prevent the waste, padding, carelessness, and abnormal inefficiency which might result from a straight cost-plus arrangement. The provision thus amounts to no more than a bribe to cause a contractor to exercise normal honesty and efficiency. Under such a contract, the Government is paying an extra sum for what it would have been entitled to in any event—the faithful, honest performance of the contract at standards customary in the business. Irrespective of whether the agreement to pay an extra sum is without consideration in a technical sense, the employment of such a device to take advantage of the necessities of the Government in wartime in order to reap even the "reasonable probability" of an excessive profit is contrary to public morals and should not be countenanced.

3. It may be objected that (a) the Court should not overturn the judgment of the administrative agency responsible for getting ships built and that (b) the bonus-for-savings contracts were reasonable when judged by the then prevailing practice of business. It is true that contracting officials of the Government might feel that as a matter of practical experience in some instances it is worth while to pay extra for an incentive to protect the Government against excessive cost due to waste, carelessness, and dishonesty in the performance of cost-plus contracts and that such

protection outweighs in importance the danger that the Government will pay an exorbitant price. Nevertheless, while the Government may thus have a proper interest in protecting itself through such a device, the contractor, who would be completely safeguarded against risk of loss by an ordinary cost-plus contract, has no legitimate reason for insisting upon additional payment for performing what would in any event have been his duty. Here, the Court is not required to substitute its judgment for that of the Government officials. For in this case it was Bethlehem, not the Government, which proposed and insisted upon the bonus-for-savings type of contract, and which refused to construct ships upon any other basis (see petitioner's main brief, pp. 63–67). And Bethlehem cannot seriously suggest that it was the common practice of persons contracting with the Government to demand as a condition of contracting a bonus-for-savings clause to enhance the probable profits. It is our position that under these circumstances such a contract forced upon the Government by Bethlehem for the avowed purpose of probably producing an excessive profit is so unconscionable and unreasonable that a court should not enforce it.

4. We do not contend, however, that, even in the circumstances of this case, the bonus-for-savings provisions necessarily render the contracts invalid. They may be construed, as they have been by the Court of Claims (see petitioner's

main brief, pp. 39–42, 46–48), as allowing recovery under the bonus clause of half of all savings due to special efforts or increased efficiency, that is, performance over and above the normal. Such a construction conforms to what the Master found (R. 638) and Powell declared to be the purpose (R. 1369) of that particular type of contract. The Court of Claims cases permitting recovery of savings resulting from increased efficiency demonstrate that there is nothing impracticable in applying such a standard. There is a total failure of proof of such savings in this case. See petitioner's main brief, pp. 23–31.

IV

THE OFFER TO PIEZ PERSONALLY AMOUNTED TO NO MORE THAN A GESTURE

Respondents' argument that Powell's offer to let Piez personally fix the terms of the contracts demonstrates that the Government was not compelled to accept Bethlehem's terms is met at page 65 of our main brief. We wish to emphasize, however, that the record demonstrates that not only the Master, the District Court, and the Circuit Court of Appeals, but even Piez himself did not treat the offer as more than a formal gesture.

The Master and the two lower courts found that (in the language of the Circuit Court of Appeals) the Government was "obliged to accept the terms offered by Bethlehem" (R. 2328, 738, 538–539, 627, 643, 574–575). These findings that

the Government needed Bethlehem's services and that it had no option but to accept Bethlehem's final offer cannot be reconciled with the contention that the offers to Piez changed the situation theretofore existing. Indeed, when the offers were made, Piez did not even inform his subordinates who were carrying on the negotiations, Bowles and Radford, or make any other use of the power granted to him; he merely told Powell to continue negotiating with Bowles (R. 1363–1365, 1624, 1527).

The findings of the Master and the two lower courts with respect to the Government's lack of freedom to refuse Bethlehem's terms have not been challenged. They must be accepted as manifesting a consistent understanding by the triers of fact that the offers to Piez were not and were not intended to be acted upon or of substantive consequence.

Respectfully submitted.

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IN THE

Supreme Court of the United States

October Term, 1940

No. ~~362~~ 8

UNITED STATES OF AMERICA,
Petitioner,

v.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY.

No. ~~363~~ 9

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION,
Petitioner,

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

BRIEF IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

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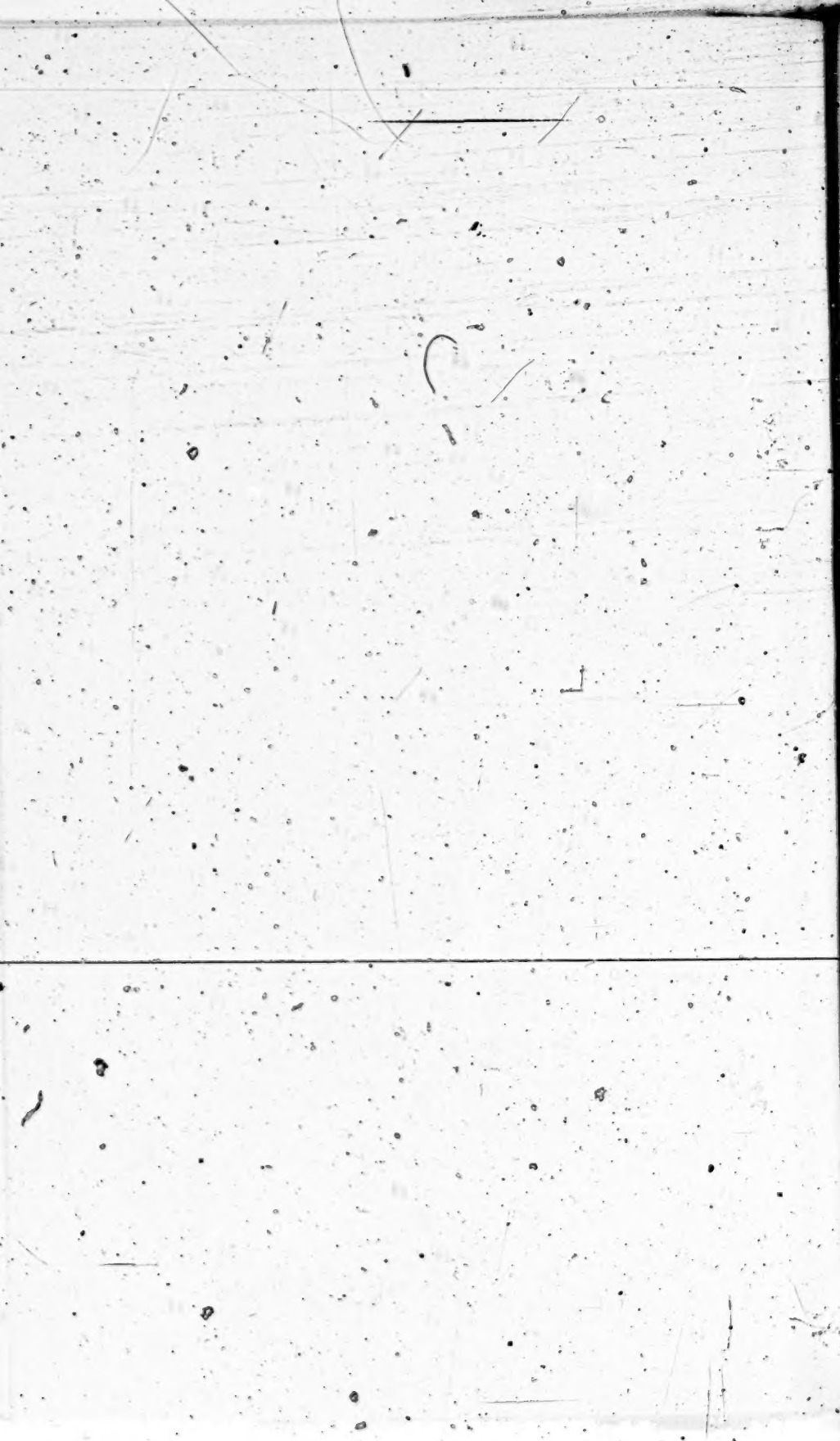

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IN THE

Supreme Court of the United States

October Term, 1940

UNITED STATES OF AMERICA, *Petitioner,* v. BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY.	No. 362
UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, *Petitioner,* v. BETHLEHEM SHIPBUILDING CORPORATION, LTD.	No. 363

BRIEF IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

The petition seeks writs for review of two cases, a suit in equity and an action at law, which were tried together before a Special Master and Referee, who will be hereinafter referred to as the Master. Bethlehem Shipbuilding Corporation, Ltd., which is the sole respondent in the law action and is also the respondent chiefly concerned in the equity case, will be hereinafter referred to as Bethlehem.

The petitioner in the law action, United States Shipping Board Merchant Fleet Corporation, will be sometimes hereinafter referred to as the Fleet Corporation.

THE QUESTIONS PRESENTED

Contracts made in 1918 by Bethlehem with the Fleet Corporation for the construction by the former of a large number of ships provided for payment to Bethlehem for each ship of the cost of construction of the ship, plus a fixed fee, plus one-half of the amount by which the cost should be less than an amount of estimated cost specified in the respective contracts. The courts below found that the amounts of estimated cost specified in the contracts represented reasonable estimates of probable costs.

The questions presented are:

1. Whether the courts below should have held the contracts to be unconscionable because Bethlehem in the performance of them earned substantial profits under the "half savings" clause;

2. Whether the courts below should have held the "half savings" clause of such contracts to be severable from the other provisions thereof for the payment of compensation to Bethlehem and that there was failure of proof that the Fleet Corporation derived benefit from that clause in the performance of the contracts;

3. Whether the courts below should have held the "half savings" clause in such contracts to be invalid as opposed to public policy and the contracts containing such clause to be beyond the authority of officers of the Fleet Corporation to make.

STATEMENT OF REASONS WHY PETITION SHOULD BE DENIED

1. The petitioners contend in their petition that the contracts therein referred to are unconscionable because of the amount of profit earned by the Contractor pursuant to the provisions of the contracts. That contention necessarily involves the question of fact whether the amounts of estimated costs specified in the contracts were, at the time such contracts were made, in excess of probable cost and known to the Contractor to be such. That question of fact has been decided against the petitioners by the Master, by the District Court and by the Circuit Court of Appeals. This Court has repeatedly declared that findings of fact concurred in by two lower courts will be accepted by this Court, unless clear error is shown. The petition does not suggest that the finding of the courts below is not supported by ample evidence. It seeks to have this Court draw the inference solely from the amount of such profit earned by the Contractor that the estimates were inflated—an inference that would be directly contrary to the findings of the courts below (pp. 17-19, *post*).

2. The question whether the contracts are unconscionable must be determined in the light of conditions existing when they were made—not on the basis of the amount of profit earned by the Contractor. The courts below found that the form of contract adopted was advantageous both to the Fleet Corporation and Bethlehem by reason of the incentive it provided to keep down the total cost to the former. They also found that the amounts of estimated cost specified in the contracts represented reasonable esti-

mates of probable cost and were in accordance with the intention of both parties. They further found that the cost to the Fleet Corporation of the ships constructed by Bethlehem under the contracts was less than the cost of comparable ships currently built for the Fleet Corporation by other shipbuilders. The Government thus got what it bargained for and in the way in which it hoped to get it, viz.: through the operation of the half-saving clause. The foregoing findings dispose also of the contentions that the contracts are opposed to public policy and were beyond the authority of the officials of the Fleet Corporation to make (pp. 19-27, *post*).

3. The petitioners also contend in their petition that the provisions of the contracts for payment of compensation to the Contractor can be severed and that the provision for payment to it of one-half of the saving under estimated cost requires proof of separate consideration in the performance of the contract. On that contention there is no conflict between the decision of the Circuit Court of Appeals and that of another Circuit Court of Appeals. On the contrary, the decision in this case is in accord with that of the only other Circuit Court of Appeals that has considered the question. The decision of the Court of Claims in the *Burke & James, Inc.* case, cited in the petition, is readily distinguishable (pp. 27-31, *post*).

4. The petitioners suggest (petition, p. 12) that the conditions of our present national emergency are such as to require this Court to define the limitations surrounding the profits which a Government contractor may lawfully receive or retain in time of war. We had supposed and believe that it is exclusively within the province of the Congress to define such limitations—by statute, by pre-

scription of contract provision or limitation, by the provision of an excess profits tax, or by all three methods combined.

Carried to its logical conclusion the contention of the Government would appear to be that this Court, independent of any statutory limitation of profits, should declare that, as a matter of law, no Government contractor, in time of war or at any other time—no matter what the terms of his contract may be or what benefits may be derived therefrom by the Government—may receive or retain any profits in excess of that which the courts shall subsequently determine to be reasonable. No authority is cited in support of that startling contention, which, if correct, would transfer the determination of prices in Government contracts from the executive to the judicial department and the determination of questions of policy, in respect of such contracts, from the Congress to the courts.

It is respectfully submitted that no considerations of public policy, past, present or future, either require or warrant the assumption of jurisdiction by this Court over cases whose determination depends almost entirely, if not entirely, upon questions of fact, all of which have been resolved against the petitioners by the Master, the District Court and the Circuit Court of Appeals, and which present no novel or unsettled question of law (pp. 31-32, *post*).

STATEMENT

Between about February 1, 1918, and a date subsequent to July 15, 1918, as of which date the last of them was dated (R. 295), Bethlehem entered into 18 separate contracts with the Fleet Corporation under which it con-

structed 83 ships of various types and sizes. 8 of such contracts, covering the construction of 51 ships, which were dated December 31, 1917, and were executed February 1, 1918 (R. 552, 589), resulted from negotiations carried on between representatives of Bethlehem and those of the Fleet Corporation, both in writing and orally, that began on December 12, 1917, and were finally brought to a conclusion at a conference on January 3, 1918. In such negotiations Bethlehem was represented by Powell, its Vice-President, and Brown, its Technical Manager, both competent shipbuilders, and, as found by the Master, the Fleet Corporation was represented by "two equally competent shipbuilding experts", Admiral Bowles and G. S. Radford, who "were advised by, and had full opportunity to advise with, Daniel H. Cox, a competent naval engineer and estimator". The interests of the Fleet Corporation were also protected by Piez, its "Vice-President and General Manager, who, while not a shipbuilder of experience, was a nationally known business executive of long experience" (R. 527).

The remaining 10 of such 18 contracts were entered into subsequent to February 1, 1918. 8 of such 10 contracts covered the construction of ships of types and sizes similar to some of the ships covered by the earlier contracts. As is hereinafter shown, the terms of such 8 later contracts as to the compensation to be paid to Bethlehem were in each case determined by the Fleet Corporation, and in the case of most of them such terms reflected a reduction determined by it from corresponding terms provided in respect of similar ships in the earlier contracts.

The 13 contracts referred to in the petition (p. 7 footnote) are a part of the 18 contracts above mentioned. 7 of such 13 contracts were among the earlier 8 contracts and

the other 6 were among the above-mentioned 8 later contracts. Of the remaining 5 out of the 18 contracts, one of the earlier ones (Contract 182) and one of the later ones (Contract 465) are not involved in any controversy and 3 others of the later contracts were canceled before any ships were completed under them. There was also cancelation in respect of certain ships under 2 of the other contracts after some expense had been incurred on them.

In the action at law Bethlehem has recovered judgment in the amount of $5,272,075.10, the unpaid amount found due to it on account of the ships completed under the contracts and on account of the part-performance by it of the canceled contracts and partial construction of the ships canceled under other contracts.

By stipulations of the parties, introduced into the record (Exhibits A, B and D, R. 1642, 1713 and 1721), the following amounts were conceded to be due to Bethlehem on account of contracts other than the 13 contracts referred to in the petition and are included in the amount of the judgment, namely:

For completed ships:		
Under Contract 182 S. C.		$ 178,989.03
Under Contract 465 S. C.		935,306.22
For canceled ships and contracts:		
Under Contract 465 S. C.	$286,462.49	
Under Contract 313 S. C.	84,044.29	
Under Contract 340 S. C.	286,173.58	
	$656,680.36	
Less overpayments on canceled Contract 312 S. C. and on ships canceled from Contract 301 S. C.	147,473.50	509,206.86
		$1,623,502.11

Bethlehem's recovery also includes (Master's report, R. 570) the following additional amounts claimed in its Nineteenth and Twentieth causes of action (R. 104-107) and admitted to be due to it (Exhibit D, par. 5, R. 1722 and 1631-1632):

For Curtis marine propelling equipments (also referred to as Perley Morse deduction)	$ 90,019.25
For reconditioning property at Wilmington	2,570.00
The total undisputed amount included in Bethlehem's recovery of $5,272,075.10 is, therefore	$1,716,091.36

Hence, to the extent of $1,716,019.36, which amount concededly is due under contracts not included among the 13 referred to in the petition, Bethlehem's right of recovery was not in dispute in the courts below and cannot be brought into question here; and the statement contained in the petition that Bethlehem has recovered judgment for $5,272,075.10 as additional profit under such 13 contracts is patently inaccurate.

In the negotiations that led up to the 8 contracts above-mentioned which were dated December 31, 1917, Powell on December 12, 1917, had a conference with representatives of the Fleet Corporation at which he was directed to submit a program of what Bethlehem could do in the way of completing ships in addition to those that it then had under construction. Following that conference, Powell submitted to the Fleet Corporation a letter, dated

December 13, 1917 (Exhibit G-104, R. 1806), outlining several alternative programs for each of the Bethlehem yards. In that letter he said:

> "Because of the unprecedented conditions surrounding the Labor and Material market, *it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction*, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figures acceptable to this Company would not be acceptable to the Emergency Fleet Corporation." (Italics supplied.)

He accordingly proposed that the contracts should be taken on the basis of actual cost plus a fixed fee with an agreed probable cost, any savings under the agreed-upon probable cost to be divided equally between Bethlehem and the Fleet Corporation. He then went on to say:

> "The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning *after paying all War and Excess Profit taxes* as today existing, of Ten Percent (10%) of the present estimated cost of construction." (Italics supplied.)*

On December 18, 1917, Powell had another conference with Admiral Bowles at which a definite program was agreed upon and Powell was instructed to submit proposals at once (R. 685). Prior thereto and in the Fall of 1917, Powell had instructed Brown to be prepared to submit estimates for such types of ships as Bethlehem might be

*The percentages of profit set forth in the petition for writs of certiorari are before, not after, excess profits taxes.

called upon to build (R. 681). The methods used by Brown in preparing his estimates, based on the cost of ships previously constructed, are fully explained in Exhibits G-154 and G-155 (R. 1852, 1854), supplemented by Brown's testimony (R. 840-865, 1041-1060, 1063-1073, 1082-1083). The courts below have found that, in view of the uncertainty of conditions affecting costs then existing, it was impossible to make an accurate estimate of cost (R. 681), and that Brown's estimates were fairly and honestly made and were as accurate as could be expected under the uncertain conditions prevailing at the time (R. 683).

On December 19, 1917, Powell submitted a definite proposal based on the form of contract suggested in his letter of December 13, 1917 (R. 685) for the construction of the ships afterwards covered by the contracts hereinafter referred to which were dated December 31, 1917. The estimated base cost proposed in that letter was based on Brown's estimates with an addition thereto of approximately 5 per cent., which included an allowance of $2.50 per ton for some high-priced steel which Bethlehem had on hand or under contract and proposed to use, but which Brown had not taken into consideration (R. 686). At the conference between Powell, Brown, Bowles and Radford on January 3, 1918, the negotiations for the contracts that were dated December 31, 1917, were closed substantially on the basis of Brown's estimates (R. 686).

The courts below have found that Bowles was thoroughly competent to check Bethlehem's estimates, that the dealings between the parties were at arm's length, that the estimated base costs were arrived at by a process of barter and trade, and that they represented reasonable estimates of probable cost (R. 686, 688). They found further that

the form of contract adopted was a desirable one from the standpoint of both parties; that it was preferable to the straight cost-plus contract, because it provided an incentive to the contractor both to keep down the cost and to expedite the work; that the representatives of the Fleet Corporation were familiar with, and approved of, such form of contract; that the estimated cost named in the contracts was not intended to represent a close estimate of the bare cost of construction, but was intended to be sufficiently liberal to provide an incentive for efficiency and was so understood and accepted by the representatives of the Fleet Corporation; and that the latter, in connection with later contracts, adopted a formula for arriving at the base cost by adding to the estimated amount of so-called bare cost an amount to provide such incentive (R. 684-685).*

Moreover, the courts below have also found that prior to the conference on January 3, 1918, Powell, in a letter to Piez, Vice-President and General Manager of the Fleet Cor-

*It was the settled policy of the Fleet Corporation when using the above-mentioned form of contracts to see to it that base prices specified therein were sufficiently above bare cost to provide the necessary incentive to keep down costs. As found by the Master, under date of October 9, 1918, Piez submitted a memorandum to the Board of Directors of the Fleet Corporation from which the following is an extract (R. 552):

> "In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.
>
> "We discussed this matter with the Board at the time the commitments were made last Spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the

poration, dated January 3, 1918 (Exhibit G-116, R. 1831), had agreed on behalf of Bethlehem "to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice-President and General Manager" of the Fleet Corporation (R. 531, 587-588).

As stated above, subsequent to the execution of the 8 contracts that were dated December 31, 1917, 10 additional contracts were entered into between the same parties, 6 of which are included in the 13 contracts referred to in the petition. Such 6 contracts provided for the construction of ships of types similar to those covered by the earlier contracts, and one of them (Contract 314, R. 270) covered in addition the construction of 7 cargo ships of a new and smaller type than any covered by the other contracts. That in the case of each of such 6 contracts the terms were fixed by the Fleet Corporation is shown by the correspondence between it and Bethlehem as follows:

Contract No. 226 (R. 197) covers four 10,100 ton tankers and three 7,400 ton cargo vessels to be built at the Sparrows Point plant. Bethlehem's proposal contained in its letter of February 25, 1918 (Exhibit G-125, R. 1836) suggested the same base prices and fixed fees as under Contracts Nos. 178 and 179 (R. 122 and 139) covering the same types of vessels, namely $1,350,000 and $125,000 for the cargo ships and $2,070,000 and $200,000 for the

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basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent."

While such memorandum related to contracts for the construction of troop ships, it is descriptive of the Fleet Corporation's understanding of the composition and purpose of base prices to be inserted in such form of contract.

tankers. On March 7 Powell wrote referring to this proposal (Exhibit G-126, R. 1838):

> "Please be advised that this Company cannot offer these vessels to the Emergency Fleet Corporation on any lower basis than that quoted in our letter above mentioned, since its mature judgment leads it to believe that a less price will not yield a living profit. However, because of its full appreciation of the Nation's desperate need of ships, it desires to repeat the offer made orally and in writing in December and January last, that it will accept the order to construct these additional vessels at such lower base price and such smaller fee as may be personally determined by Mr. Charles Piez, Vice-President and General Manager, with the proviso in the present instance that the contracts will otherwise be duplicates of those for new construction already signed by the Bethlehem Shipbuilding Corporation, Ltd. and the Emergency Fleet Corporation."

To this letter Piez replied under date of March 18 (Exhibit G-127, R. 1839), reducing the base prices to $1,295,000 and $2,000,000, respectively, the fixed fees to remain the same as in the previous contracts.

Contract No. 230 (R. 210) covers 2 additional stock ships to be built at Union, Hulls 215-216. In its letter of January 17, 1918 (Exhibit G-122, R. 1833), Bethlehem proposed a base price of $2,124,000 and fixed fee of $212,400, the same as for Hulls 150 and 153. In its letter of April 8, 1918 (Exhibit G-128, R. 1840), the Fleet Corporation offered to take these vessels at a base price of $2,000,000 and a fixed fee of $200,000. Bethlehem objected to this in its letters of April 16, 1918 (Exhibit

G-130, R. 1841), but agreed to reduce the base price to $2,075,000 and the fixed fee to $207,500, which proposition was accepted by the Fleet Corporation in its letter of April 22, 1918 (Exhibit G-133, R. 1847).

Contract No. 299 (R. 222) covers three 9,100 ton tankers to be built at Fore River, duplicates of the tankers covered by Contract No. 183 (R. 158). Bethlehem's proposal, which is contained in its letter of April 18, 1918 (Exhibit G-132, R. 1843), suggested the same base price and fixed fee, namely, $1,865,000 and $185,000. The Fleet Corporation's letter of April 30, 1918 (Exhibit G-134, R. 1848), reduced the base price to $1,850,000 and left the fixed fee at $185,000.

Contract No. 300 (R. 234) covers three 10,100 ton tankers and Contract No. 312 (later canceled) covered three 7,400 ton cargo boats to be built at Sparrows Point, duplicates of vessels covered by Contract No. 226. Bethlehem's proposal, which is contained in its letter of April 18, 1918 (Exhibit G-132, R. 1845), suggested the same base price and fixed fee as under the previous contract. The Fleet Corporation's letter of April 30, 1918 (Exhibit G-134, R. 1848), accepted the same base price and fixed fee on the tankers, but in its letter of May 15, 1918 (Exhibit G-135, R. 1849), reduced the base price on the cargo vessels to $1,250,000, leaving the fixed fee at $125,000 the same as under the earlier contract.

Contract No. 301 (R. 246) covers six 10,100 ton tankers and six 11,800 ton cargo vessels to be built at Union, the tankers to be duplicates of the tankers under Contract No. 177 (R. 109) and the cargo vessels duplicates of the Hulls 215-216 covered by Contract No. 230 (R. 210). Bethlehem's proposal, which is contained in its letter

of April 18, 1918 (Exhibit G-132, at R. 1845), suggested the same terms as under the previous contract, namely, $2,120,000 and $210,000 for the tankers and $2,075,000 and $207,500 for the cargo ships. The Fleet Corporation's letter of April 30, 1918 (Exhibit G-134, R. 1848), reduced the base price on the tankers to $2,100,000, the fixed fee, as well as the base price and fee on the cargo boats, remaining the same as under the previous contracts.

Contract No. 314 (R. 270) covers three 7,500 ton tankers and seven 5,100 ton cargo vessels to be built at Harlan, the tankers to be the same as those covered by Contract No. 178. Bethlehem's proposal, which is contained in its letter of April 18, 1918 (Exhibit G-132, R. 1844), suggested the same terms for the tankers as under Contract No. 178 ($1,612,000 and a fixed fee of $160,000), and for the cargo vessels the base price of $1,045,000 and fixed fee of $105,000. In its letter of April 30, 1918 (Exhibit G-134, R. 1848), the Fleet Corporation wrote:

> "The question of three 7500 ton tankers and seven 5100 ton cargo vessels to be constructed at your Harlan plant and the three 7400 ton cargo vessels* to be constructed at your Sparrows Point plant, has been held in abeyance pending further investigation relative to the estimated base cost of the vessels in question."

On May 15, 1918, the Fleet Corporation by letter awarded to Bethlehem the Contract No. 314 on the basis of an estimated cost of $1,560,000 for each of the tankers and

*The 7400 ton cargo vessels were those covered by Contract No. 312 referred to above.

of $980,000 for each of the cargo boats, with a fixed fee of $156,000 and $98,000, respectively (Exhibit G-135, R. 1849).

In respect of the above-mentioned later contracts the Master's report is as follows (R. 554):

> "The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the 'base cost' of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they fixed the 'base cost' of all these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances (see G. 134, Doc. 391*)".

Concerning all the contracts referred to in the petition the courts below have found that the estimated base costs used in them represented reasonable estimates of probable cost; that there was no misrepresentation on the part of Bethlehem in the negotiation of them; and that they were fairly negotiated and were agreed to by the parties as the best that could be made under the circumstances (R. 688, 689).

The courts below also found that the cost to the Government of the ships built under the Bethlehem contracts was less than the cost of comparable ships under either lump sum or cost plus contracts made by the Fleet Cor-

*R. 1848.

poration with other shipbuilders (R. 554, 568) or in other words that the form of the contracts that was adopted accomplished its purpose.*

ARGUMENT

I.

THE CONTENTION OF THE PETITION THAT THE CONTRACTS ARE UNCONSCIONABLE BECAUSE OF THE AMOUNT OF PROFIT EARNED BY THE CONTRACTOR IS NECESSARILY BASED ON THE CONTENTION THAT THE AMOUNTS OF ESTIMATED COST SPECIFIED IN THE CONTRACTS WERE, AT THE TIME OF THE MAKING OF THE CONTRACTS, IN EXCESS OF PROBABLE COST AND KNOWN TO THE CONTRACTOR TO BE SUCH. HENCE IT IS PREDICATED ON QUESTIONS OF FACT WHICH HAVE BEEN DECIDED AGAINST THE PETITIONERS BY THE COURTS BELOW.

The whole contention of the petition that the contracts in controversy should be held to be unconscionable is based on the assumption that the amounts of estimated cost

*This finding is based upon an elaborate set of exhibits comparing the costs of the various types and sizes of ships built by Bethlehem with similar types and sizes of ships built by others based upon data as to the cost of the latter ships furnished by the Fleet Corporation (Exhibits B-3, B-4, which were sent up to the Circuit Court of Appeals as physical exhibits pursuant to the order at R. 1932) and upon the testimony of Brown who prepared them in explanation of them and of the showing made by them (R. 1094-1125, 1136-1140).

agreed upon between the parties and specified in the contracts were inflated (petition, p. 14) or swollen (petition, p. 13). That contention presents a question of fact which the courts below have decided against the petitioners. As we have shown above, those courts have found that, in view of the uncertainty of conditions affecting costs then existing, it was impossible to make an accurate estimate of cost (R. 681); that Brown's estimates were fairly and honestly made and were as accurate as could be expected under the uncertain conditions prevailing at the time (R. 683); and that the estimated base costs specified in the contracts represented reasonable estimates of probable costs (R. 686, 688).

The contention of the petition that the costs were inflated is based solely on the amount of profits earned by Bethlehem under the contracts. With this as its sole basis, the petition proposes that this Court should review the decision of the courts below and should draw the inference that the amounts of estimated costs specified in the contracts were in excess of the amounts of probable cost and were known to Bethlehem to be such when the contracts were made. The courts below have specifically refused to draw such an inference. In their requested finding No. 278 (R. 678) the petitioners requested the Master to find that the "savings" resulted from the gross and improper inflation of the estimates of cost designated as base prices in the respective contracts. The Master's ruling on this request was "Denied. This is not justified by the evidence." The Master's ruling in this respect, as in others, was adopted by the District Court (R. 760) and was confirmed by the Circuit Court of Appeals (R. 2327).

This Court has repeatedly declared that findings of fact concurred in by two lower courts will be accepted by this

Court unless clear error is shown.* As we have shown above, the findings of the court below concerning the amounts of estimated base cost stipulated in the contracts are supported by ample evidence. There is no evidence in the record that they were not within the range of probable cost, and the courts below have found that they were. Under the established policy of this Court, it will not review on certiorari the decision of the Circuit Court of Appeals for the purpose of determining whether this Court might draw, solely from the amount of profit earned by Bethlehem under the contracts, an inference contrary to the specific findings of the Master, of the District Court and of the Circuit Court of Appeals.

II.

THE CONTRACTS MUST BE JUDGED, AS TO WHETHER THEY ARE UNCONSCIONABLE, IN THE LIGHT OF CONDITIONS EXISTING WHEN THEY WERE MADE AND ON THE BASIS OF THE TOTAL COST OF THE SHIPS TO THE FLEET CORPORATION, NOT ON THE BASIS OF THE AMOUNT OF PROFIT EARNED BY THE CONTRACTOR.

Three forms of contract were open to the parties, viz.: lump sum, cost plus a percentage of cost, or cost plus a fixed fee plus a percentage of savings, if any, under an

United States v. *O'Donnell*, 303 U. S. 501; *Pick Manufacturing Co.* v. *General Motors Corporation*, 299 U. S. 3; *I. T. S. Rubber Co.* v. *Essex Rubber Company*, 272 U. S. 429; *Texas & New Orleans Railroad Company* v. *Brotherhood*, 281 U. S. 548; *United States* v. *Commercial Credit Co., Inc.*, 286 U. S. 63; *Page* v. *Arkansas Natural Gas Corporation*, 286 U. S. 269; *Gilson* v. *United States*, 234 U. S. 380.

estimated base cost—the form adopted. The Master found that the form of contract adopted "was a desirable one from the standpoint of both parties" and "preferable to the straight cost-plus contract, because it provided an incentive to the contractor both to keep the cost down and expedite the work" (R. 684), and both the District Court (R. 760) and the Circuit Court of Appeals (R. 2330) affirmed that finding. Piez, the Chief Executive Officer of the Fleet Corporation, so testified (R. 1498-1499). In so far as the petitioners' argument rests upon Bethlehem's supposed insistence* upon the "bonus-for-savings" clause (petition, p. 13), it falls to the ground. The use of this form of contract, so far from being unconscionable, was shown by the uncontradicted evidence, found by the Master and confirmed by both courts below to have been advantageous both to the Fleet Corporation and the Contractor.

The Master also found that, in order that the benefits sought to be derived by the Fleet Corporation from the use of this form of contract might be received, it was "essential that the estimated or base cost should be sufficiently liberal to afford a reasonable opportunity to the contractor to cut under it" (R. 684-685) and that this was fully understood and approved of by representatives of the Fleet Corporation (R. 685). Those findings in common with all others were affirmed by both the District Court (R. 760-761) and the Circuit Court of Appeals (R. 2323-2332).

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*As shown above (pp. 11-12), so far from insisting either upon this form of the contract, or upon the allegedly "inflated" base prices submitted, Bethlehem as found by the Master (R. 531, 587-588) and affirmed by both courts below agreed "to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice-President and General Manager."

As hereinbefore pointed out, both the courts below held that the agreed upon estimated base costs represented reasonable estimates of probable cost. As appears from the foregoing, it was not only contemplated but essential, if the purpose of the contracts was to be accomplished, that they should also be "liberal" estimates of probable cost. The fact that they contained allowances for a probable decrease in the efficiency of labor—due to the anticipated influx of green labor in large numbers—and for anticipated increases in the cost of material, etc. (petition, pp. 7-8) did not and could not render the contracts unconscionable. Such allowances were clearly elements of "probable cost", which the parties, moreover, intended should be "liberal" and not "close".

Of course, the purpose of this form of contract and of the agreed upon base price was to provide an incentive to cut under so as to provide the Government with its ships at prices less than those built under either lump sum or straight cost plus contracts. The contracts—now charged to have been unconscionable—were productive of the desired result. The Master found that the cost to the Fleet Corporation of the ships constructed by Bethlehem under the contracts, now attacked, was less than the cost of comparable ships built for it under both cost plus and lump sum contracts (R. 554). The Government thus benefited by these contracts in precisely the manner in which it hoped to benefit therefrom, viz.: by keeping the cost of the ships down, through the provision of estimated base costs, affording to the Contractor both the opportunity and the incentive to cut under them, as the parties intended.

The only unconscionable thing about this case is the attempt of the Government—having obtained the benefit

sought—to escape payment in accordance with the terms of the contracts, through whose use such benefit accrued.

Thus the contention of the petition is not that the contracts should be held to be unconscionable because the cost to the Fleet Corporation of the ships constructed under them would be excessive, but only because Bethlehem earned under them greater profits than the petitioners think that the Government should be required to pay. There can be no doubt on the Record that it was the intention of the parties that the amounts of estimated cost specified in the contracts should be so fixed as to give the Contractor an opportunity, if it did its job well, to earn substantial profits under the half-savings clause. As stated above, in its letter of December 13, 1917 (Finding 11, R. 683), referring to the basis of estimated cost to be employed in the contracts, Bethlehem proposed:

> "The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning *after paying all War and Excess Profit taxes* as today existing of Ten Percent (10%) of the present estimated cost of construction." (Italics supplied.)*

As to the composition and purpose of the base price, Piez, Vice-President and General Manager of the Fleet Corporation, who had had experience with incentive contracts in his manufacturing business, testified as follows (R. 1500-1501):

> "A. The price had to be placed for actual cost, if we knew the cost, plus an allowance for contingencies, plus an allowance for incentive, plus the fee. So we start out with the bare cost; then in order to meet any contingencies that may happen,

*There is no evidence that Bethlehem made more.

> add some allowance for contingencies; in order to give a proper incentive, add an incentive allowance; and then add the fee."

Later on, as the Master found, the Fleet Corporation adopted a formula for arriving at the base cost by adding to the estimated amount of so-called bare cost an amount to provide the necessary incentive to cut under it (R. 685). Indeed, as is further shown in the Master's report, having reference to Exhibit B-6 (R. 1900), it became, in the Spring of 1918, the settled policy of the Fleet Corporation, when using this form of contract, to see to it that base prices were sufficiently above bare cost to provide the necessary incentive to keep the cost down (R. 551-552). In this connection the District Court said (R. 740):

> "In viewing the 'unconscionable profits' phase of it, there is this to be said. The motive for the insertion of the bonus feature is obvious. Unless the promise was of substantial profits, the incentive to keep down the cost would be lacking."

In the same connection, the Circuit Court of Appeals said that the Government's representatives accepted the terms of the contracts "with full knowledge, as we have said, that the estimated cost figures included in the contracts did not represent close approximations but were so prepared as to assure to Bethlehem substantial additional profits by way of the bonus for savings." (R. 2328)

The result sought to be attained by the form of the contracts entered into was to keep the cost down, and thus to save the Government money. The means adopted for the attainment of that end was the simple device of providing a base price, sufficiently liberal to afford the con-

tractor an opportunity to cut under it, and of dividing with him the difference between such base price and the actual cost, if lower. As we have shown above, the courts below have found in the present cases that it was productive of the desired result.

In their petition the petitioners refer to a finding by the Master that there was no evidence that the cost of construction of the respective tank and cargo ships in controversy was reduced as a result of the "bonus-for-savings" provisions of the respective contracts. It is not clear to us what such finding was intended to mean. It is inconsistent with the finding to which we have last referred, unless it was intended only to mean that Bethlehem had not undertaken to show what the cost of the ships would have been in the absence of the "half savings" clause of the contracts. In that connection, it should be noted that the Circuit Court of Appeals said that the record contains evidence tending to show that the savings resulted, in part at least, from increased efficiency (R. 2330)*; in other

*This in part has reference to Exhibit B-32, which was ordered sent up to the Circuit Court of Appeals as a physical exhibit by the order at R. 1932, and which showed a breakdown prepared by a witness for the Government of the costs of the contract ships divided as between material, labor and plant operating and overhead expense. By comparison of the labor cost incurred under successive contracts for identical ships it shows a progressive decrease in labor cost of ships built under the later contracts as compared with the labor cost of identical ships built under the earlier contracts, thus reflecting a progressive increase in the efficiency of labor during the performance of the contract program. A like result is shown in Exhibit B-33 (R. 1931), which shows a comparison of labor hours expended on Hulls 376, 377 and 378, built under Contract 183, and labor hours expended on identical Hulls 379, 380 and 381, built under Contract 299.

words, that the form of the contracts accomplished its purpose.

The Government has thus benefited from the contracts in precisely the manner in which it hoped to benefit therefrom; namely, by keeping the cost of the ships down through the provision of base prices affording to the Contractor both the opportunity and the incentive to cut under them. When the contracts were made it was, as the courts below have found, impossible to estimate what the cost of construction would be or how much additional profit by way of half-savings Bethlehem might make under them. That Bethlehem did its job well is shown both by the amount of savings that it accomplished and by the fact that after payment in full of the amounts provided in the contracts the ships will have cost the Government less than comparable ships built under contracts with other shipbuilders.

The contracts must be judged by conditions existing at the time, the purpose sought to be achieved and the results accomplished under them and not by the amount of profit that Bethlehem was able to earn.* The classic definition of an "unconscionable contract" is that of Lord Hardwicke

*Moreover, in respect of the profits earned the Circuit Court of Appeals aptly said (R. 2329):

> "It must be recalled, as the special master pointed out in his report, 'that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long-time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes, and other carrying charges. All of these, however, were charges incident to the standby

in *Earl of Chesterfield* v. *Janssen*, 2 Ves. Sen. 125, 155, to-wit:

> "such as no man in his senses and not under delusion would make on the one hand and as no honest or fair man would accept on the other."

In no subsequent case which has come to our attention, including those cited in the petition, has any contract been held unconscionable unless the total amount to be paid was so exorbitant and made under such circumstances as to bring it within that definition.

The estimated costs specified in the contracts under consideration represented reasonable estimates of probable cost (R. 688). Hence it was characteristic of the form of contract adopted that the greater the profit earned by the Contractor under the "half-savings" clause, the less would be the cost of the ships to the Fleet Corporation. Such was the purpose of the contracts. The fact that Bethlehem accomplished that purpose by doing its job well, and thereby earned substantial profits under the "half-savings" clause, at the same time saving expense to the Fleet Corporation and enabling it to get the ships for less than it was paying to other shipbuilders for comparable ships, presents no

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service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it.'"

basis for the contention that the contracts in controversy or the half-savings provision of them can be held to be unconscionable.

The foregoing considerations dispose also of the contentions of the petition that the contracts are opposed to public policy and were beyond the authority of the Fleet Corporation to make.

III.

ON THE CONTENTION PRESENTED IN THE PETITION THAT THE PROVISIONS OF THE CONTRACT FOR PAYMENT OF COMPENSATION TO THE CONTRACTOR CAN BE SEVERED AND THAT THE PROVISION FOR THE PAYMENT TO IT OF ONE-HALF OF THE SAVING ACCOMPLISHED UNDER ESTIMATED COST REQUIRES PROOF OF SEPARATE CONSIDERATION IN THE PERFORMANCE OF THE CONTRACT, THERE IS NO CONFLICT BETWEEN THE DECISION OF THE CIRCUIT COURT OF APPEALS AND THAT OF ANOTHER CIRCUIT COURT OF APPEALS. THE DECISION OF THE COURT OF CLAIMS IN THE *BURKE & JAMES, INC.* CASE, CITED IN THE PETITION, IS READILY DISTINGUISHABLE.

Under the contracts referred to in the petition the consideration moving to the Fleet Corporation was the construction of the ships contracted to be built. The consideration moving to the Contractor was the price to be paid for their completion. The provision for participation in savings was as much a part of that consideration as the reimbursement of cost and the payment of a fixed fee. The contention of the petition, however, is that that provision

is severable from the other provisions of the contracts concerning the compensation to be paid to the Contractor, and *Burke & James, Inc.* v. *United States,* 63 Ct. Cls. 36, is cited in support of the contention. The same contention was made before the Master, who said (Report, R. 555):

> "The Government relies upon the case of *Burke & James, Inc.* v. *United States,* 63 Court of Claims Reports 36, as authority for its request that the Master shall find that the contract is unenforceable because it may produce for Bethlehem an unconscionable and grossly excessive profit. The Master has examined the *Burke & James* case, and is of opinion that the facts upon which the decision of that case was based are so different from the facts appearing in the record before the Master that the rule applied by the Court of Claims is not applicable here."

That opinion of the Master was adopted by the District Court (R. 760), and the Circuit Court of Appeals concurred. The latter Court said (R. 2330):

> "We agree with the Circuit Court of Appeals for the Sixth Circuit, which in *Dayton Airplane Co.* v. *United States,* 21 F. 2d 673, had a similar contract before it, that this form of contract was a proper one and not against public policy and that the bonus for savings provision which formed part of the consideration for Bethlehem's agreement to build the ships may not, alone of all the provisions in the contract, be set aside as unenforceable and void."

In the *Dayton Airplane Co.* case the Circuit Court of Appeals for the Sixth Circuit had said:

> "Even if the subject were othe. wise open, it would be difficult to set aside only one contract provision which formed a part of the consideration for the counter-promises."

The facts of the *Burke & James* case are so different from the facts as found by the courts below in these cases that there is no real conflict between the decision of the Court of Claims in that case and the decision here. In that case the Court quoted from its decision in an earlier case, not here in point, as follows (p. 53):

> "The test in such cases is whether or not there was any benefit to be derived by the United States."

As we have hereinabove shown, it was not only anticipated by the parties that the Government would benefit from the "half-savings" provision of the contracts, but it actually did so.

Moreover, it appears in that case that the Government relied upon the accuracy of the plaintiff's estimate (p. 52), which the Court said was the result of an "egregious" (p. 53) or "gross" (p. 59) error by which the Government was misled (p. 59) and induced "to erroneously bind itself to pay for acticles to be supplied a sum largely in excess of their possible worth" (p. 53). In the present cases the representatives of the Fleet Corporation, as the courts below have found, did not rely on the estimates, which were found to be as accurate estimates of cost as could be expected in view of the uncertain conditions of the times (R. 683), and were not misled by the estimates submitted (R. 539; see also the denial of requests for findings concerning reliance on the estimates at R. 647, 648, 651, 653-654).

Moreover, the doctrine of the *Burke & James* case is a novel one, unsupported by any authority, that either the validity of a contract or the existence of a consideration therefor is to be determined by the results of its performance. Equally without precedent is the suggestion that where such a provision is contained in the original contract, as distinguished from a change made by a supplemental contract, as was the case in some of the earlier cases in the Court of Claims cited in the petition, some independent consideration therefor is required.

Failure of consideration cannot be found when the party asserting it gets what he bargains for. In this case the Government got exactly what it hoped to get out of the bargain; namely, the construction of ships at less cost than those constructed by any other contractor. The contracts operated just as the parties intended them to operate, and by the use of that "device" which Piez reported to the trustees (Ex. B-6, R. 1900; Master's Report, R. 552) had been found to be the most effective way of keeping costs down; namely, by dividing with the Contractor the difference between actual and estimated cost, however brought about, through the use of the simple mathematical formula that was written into the contracts.

Moreover, as the Circuit Court of Appeals pointed out (R. 2330), the statement, repeatedly made in the petition, that savings were not the result of increased efficiency is not correct.

The petitioners' contention is based primarily upon the assumption that, despite the express provisions of the contract to the contrary, it was understood that Bethlehem was to participate only in such savings as resulted from in-

creased efficiency. The Master refused to find that there was any such understanding. The only finding requested by the petitioners embodying the contention now made was their Request No. 173, which was denied. This Request and the ruling thereon were as follows (R. 637):

> "173. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that under the 'half-savings' form of contract Bethlehem was supposed to participate only in such 'savings', if any, as were earned and made possible by its efforts and ability to reduce cost by increasing efficiency.
>
> "Denied. Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency."

IV.

THERE IS NO AUTHORITY IN LAW OR ELSEWHERE WHICH WOULD WARRANT THE ADOPTION OF THE SUGGESTION MADE IN THE PETITION THAT CONDITIONS OF OUR PRESENT NATIONAL EMERGENCY ARE SUCH AS TO REQUIRE THIS COURT TO DEFINE THE LIMITATIONS SURROUNDING THE PROFITS WHICH A GOVERNMENT CONTRACTOR MAY LAWFULLY RECEIVE OR RETAIN IN TIME OF WAR.

It is suggested in the petition (p. 12) that the conditions of our present national emergency are such as to require this Court to define the limitations surrounding the profits which a Government contractor may lawfully receive or retain in time of war. As stated above in paragraph 4 of the Statement of Reasons Why the Petition Should be

Denied (pp. 4-5), we had assumed and believe that it is exclusively within the province of the Congress to define limitations of profits which a Government contractor may receive or retain, if it shall so desire—by statute, by prescription of contract provision or limitation, by the provisions of an excess profits tax, or by all three methods combined. It is so clear to us that there is no authority in law or elsewhere which would warrant the transfer of the determination of prices in Government contracts from the executive department to the judicial department and the determination of questions of policy in respect of Government contracts from the Congress to the courts that it does not seem to us to be necessary to add to what we have said in paragraph 4 of such Statement.

Conclusion

It is respectfully submitted that the petition for writs of *certiorari* should be denied.

FREDERICK H. WOOD,
Attorney for Respondents.

W. W. Robison,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 8

UNITED STATES OF AMERICA,
Petitioner,

v.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY,
Respondents.

No. 9

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION,
Petitioner,

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,
Respondent.

BRIEF FOR RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

UNITED STATES OF AMERICA, *Petitioner,* v. BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY, *Respondents.*	No. 8
UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, *Petitioner,* v. BETHLEHEM SHIPBUILDING CORPORATION, LTD., *Respondent.*	No. 9

BRIEF FOR RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 2323) is reported in 113 F. (2d) 301. Two opinions of the District Court (R. 733, 749) are reported in 23 F. Supp. 676 and 26 F. Supp. 259. Two further opinions of the District Court, not here material, are at R. 745 and 749.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on June 18, 1940. The petition for writs of certiorari was filed on August 22, 1940, and was granted on October 14, 1940. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936).

STATEMENT

The writ in No. 9 is for the review of a judgment affirming a judgment for the plaintiff entered December 23, 1938, in an action *in assumpsit*. The writ in No. 8 is for the review of a judgment affirming a decree entered December 12, 1938, dismissing the bill of complaint in a suit in equity.

Both causes arose out of contracts entered into in 1918 between the respondent, Bethlehem Shipbuilding Corporation, Ltd.* (hereinafter called Bethlehem), and the petitioner in the action at law, United States Shipping Board Merchant Fleet Corporation, under its former name of United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation), for the construction of ships by the former for the latter.

The litigation was begun by an action at law by Bethlehem against the Fleet Corporation, which was pending in the District Court for the Southern District of New York when the bill of complaint in the equity suit was filed in the District Court for the Eastern District of Pennsylvania.

*Bethlehem Shipbuilding Corporation, Ltd., is the sole respondent in No. 9 and the real party in interest among the respondents in No. 8.

Pursuant to a stipulation entered into by the parties to both causes (R. 816-18), the action at law now before the Court was brought in the Eastern District of Pennsylvania upon the same causes of action, insofar as now material, as those pending in the action in the Southern District of New York, and the latter action remained passive, pending the joint trial of the two causes in the District Court for the Eastern District of Pennsylvania.

1. The issues as presented by the pleadings.

In view of the petitioners' comments upon the failure of Bethlehem to prove this and that, or of the Master to find this and that, the questions before the Court may be clarified by a statement of the issues as presented by the pleadings.

In its action at law Bethlehem sued to recover, among other claims, sums remaining unpaid to it pursuant to the provisions of certain of the above-mentioned contracts. In its affidavit of defense in that action, the Fleet Corporation sought to prevent the recovery of such additional sums, and to recover amounts that had been paid to Bethlehem, upon the ground that some of the contracts had been induced by false representations made by Bethlehem as to the estimated costs of the ships to be constructed, and relied upon by the Fleet Corporation (R. 391-8). In the Bill of Complaint in its suit in equity, the Government sought, among other claims, to recover such amounts theretofore paid upon the same ground (R. 1958-60). As said by the Circuit Court of Appeals (R. 2326-7):

> "In the pleadings and in the court below the chief contention of the Government was that Bethlehem was guilty of fraud in the making of the ship construction contracts to which we have referred."

The charges of fraud made by the pleadings were specific, and were two in number.

First, it was charged that Bethlehem had falsely represented that, by reason of circumstances existing at the time when the contracts were made, it was "impracticable to estimate within a reasonable percentage what would be the actual cost of constructing" the vessels covered by the contracts.

The second charge was that Bethlehem had falsely represented that the estimates submitted were "fair and reasonable estimates of said costs, based upon the wage scale then in effect and upon existing costs of materials, together with a reasonable allowance to cover increases in cost in the ensuing eighteen months" (Affidavit of Defense, Par. Nineteenth, R. 396). The amounts of estimated cost stated in the contracts were alleged to have been known by Bethlehem's representatives "to be very greatly in excess of any costs which could reasonably be anticipated" (Affidavit of Defense, Par. Twentieth, R. 396-7). Upon both of these issues of fact the Master and both courts below found in favor of the respondent.

The findings below are unanimously to the effect that there was no fraud in the transactions. Hence, the petitioners now abandon the fraud charge and contend that, because it was at that time impossible to estimate cost of construction "within a reasonable percentage", and because the estimates submitted did contain "a reasonable allowance to cover increases in cost in the ensuing eighteen months", and were "costs which could reasonably be anticipated", Bethlehem is not entitled to recover any additional sums under the contract, and must pay back a part of those already received. In other words, the petitioners by their

pleadings, upon which the cases were tried before the Master, asserted that Bethlehem could not recover the amounts claimed to be due under the contracts, and should be required to pay back a portion of those already received thereunder, because the representations upon which the contracts were entered into were false, while they now contend that the petitioners are entitled to the same relief because such representations were true.

The primary bases of the contention now made are (1) that Bethlehem is not entitled to recover under the so-called half-savings clause, in the absence of proof that such savings were the result of increased efficiency, and (2) that the estimates of probable cost, because they contained allowances for probable increases in the cost of materials, for an anticipated decrease in the efficiency of labor, and for certain other contingencies, were not a proper basis for determining the amount to be paid to Bethlehem under the half-savings clause, because there was a possibility that some of such contingencies would not occur and that, therefore, Bethlehem would benefit by savings not entirely attributable to its efforts.

No such issue as the first of these contentions was tendered either in the Government's bill in equity or in the Fleet Corporation's affidavit of defense. Neither the Government in its bill, nor the Fleet Corporation in its counterclaim, alleged that it was entitled to recover amounts already paid, under the half-savings clause, upon the ground that the difference between actual and estimated cost did not result from increased efficiency; nor did either plead that there was a failure of consideration, or that the contract was unconscionable or against public policy, by reason of that alleged fact.

The second of the contentions mentioned is not only not within the issue tendered by the pleadings, but is directly contrary to the pleadings, which interpreted the contracts as calling for estimated base costs which included allowances for increased cost of materials, anticipated decrease in the efficiency of labor, etc., and only complained that the estimates upon which the base costs were predicated were swollen and inflated.

Neither did the Government in its Bill of Complaint, nor the Fleet Corporation in its affidavit of defense, allege, as is now contended, that the contracts in question were exacted under duress, or that the officers of the Fleet Corporation lacked authority to enter into such contracts except under conditions which would limit the profits arising under the half-savings clause to those proven to have resulted from increased efficiency.

Except for the charges of fraud, now abandoned, and charges relating to an alleged dual capacity of Charles M. Schwab*, which were abandoned during the trial, the only

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*These allegations of the bill of complaint (Pars. Twenty-sixth-Twenty-eighth, R. 1961-4) and the affidavit of defense (Pars. Twenty-sixth-Twenty-ninth, R. 399-402) were to the effect that Charles M. Schwab after April 11, 1918, held the office of Director General of the Fleet Corporation while also holding the office of Chairman of the Board of Directors of Bethlehem Steel Corporation and a dominating position in its subsidiary companies, and that the Fleet Corporation during such alleged dual relationship of Charles M. Schwab, failed to exercise a power to modify, suspend or cancel the contracts in controversy. This element of the cause of action in the equity case and of the defense and counterclaim in the action at law was not pressed either in brief or argument before the Master, was completely disposed of by the Master in his report (R. 542-3), was not urged either in brief or argument before the District Court or the Cir-

ground of relief asserted in the bill in equity or the affidavit of defense was to the effect that no contractor in time of war is entitled to receive more than "a fair and reasonable profit upon the work done", and that any contract which results in "the payment of any sum in excess of a fair and reasonable profit * * * is void and unenforceable" (R. 1960; 398-9). This broad contention also appears to have been abandoned, though it was suggested in the petition for certiorari.

In short, not a single one of the grounds upon which the petitioners now seek relief was within the issues as tendered by the pleadings. The point is not a technical one, since the case was tried, the record was made, and the Master's findings and conclusions were predicated, upon the issues so tendered.

2. The facts as found.

(a) *As to advantageous character of the form of contract adopted.*

The history of the negotiations which led up to the first series of contracts in suit, upon which agreement was reached on January 5, 1918 (R. 530-1), is set forth in our Point IV. In the negotiations Bethlehem was represented by Joseph W. Powell, its Vice-President, and Harry Brown, its Technical Manager, both competent shipbuilders. The Fleet Corporation was represented, as the Master found (R. 527), by "two equally competent shipbuilding experts",

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cuit Court of Appeals, and was not mentioned in the statement of either appellant of the points upon which it intended to rely on its appeal to the Circuit Court of Appeals upon which the record was made up pursuant to Rule 75 (g) of the Federal Rules of Civil Procedure (R. 770, 2313).

Admiral F. T. Bowles, Manager of its Division of Steel Ship Construction, and G. S. Radford, Manager of its Contract Division, who "were advised by, and had full opportunity to advise with, Daniel H. Cox, a competent naval engineer and estimator". The interests of the Fleet Corporation were also protected by Charles Piez, its Vice-President and General Manager, who, as the Master found, "while not a shipbuilder by experience, was a nationally known business executive of long experience" (R. 527).*

Three forms of contract were open to the parties —lump sum, cost plus, and the form adopted, by which the contractor was to be paid the actual cost of the ship, a fixed fee, and a percentage of the amount, if any, by which actual cost was less than the estimated or base cost inserted in the contract (R. 2324).

In his letter of December 13, 1917, in response to a request to submit a program for the construction of vessels, Powell wrote to the Fleet Corporation, submitting several alternative programs (Exh. G-104, R. 1806, offered, R. 875). In that letter he said:

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*Admiral Bowles was regarded as one of the foremost shipbuilders in the country. He had been Chief Constructor of the United States Navy and was credited with being the builder of the White Squadron of Spanish-American War days. Later for some ten years he had been President of Fore River Shipbuilding Company (R. 837-8, 1505, F. 19, R. 686). His first assistant, Daniel H. Cox, was a well known marine architect and engineer of experience in shipbuilding (F. 19, R. 686; R. 1505). G. S. Radford was a graduate of Annapolis and also of the Massachusetts Institute of Technology, and had served for ten years as a constructor in the Navy and had had charge of contract matters (R. 1600). Charles Piez for some fifteen years before he became Vice-President and General Manager of the Fleet Corporation had been President of the Link Belt Company of Chicago (R. 1494).

> "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. * * *"

The Master and both courts below found that it was not only impracticable, but impossible, under the circumstances then existing, to make an accurate estimate of what it was going to cost to build a ship (F. 3, R. 681; R. 760, 2333). This finding is based upon a unanimity of testimony of witnesses for both sides—of Powell and Brown, who represented Bethlehem in the negotiations, and also of Piez (R. 1496-8), the General Manager of the Fleet Corporation, and of Radford, who, together with Bowles, represented the Fleet Corporation in the negotiations and who was the petitioners' chief witness in respect of those negotiations (R. 1611-3).*

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*At the time when these suits were brought to trial Bowles was dead (F. 18, R. 577). Radford and Piez were the only persons who had been connected with the Fleet Corporation, and who had had anything to do with the letting of the contracts, except insofar as they were advised by Cox and by Cuthell, who was counsel for the Fleet Corporation (R. 527). Piez, as well as Radford, corroborated the truth of the representation contained in Powell's letter of December 13, 1917 (R. 1496-8, 1611-13). Neither Cox nor Cuthell was called as a witness. In view of these circumstances, the allegation in the Government's Bill, repeated a year later in the affidavit of defense of the Fleet Corporation, that the representation contained in Powell's letter was knowingly false at the time when it was made, exhibits a considerable degree of recklessness upon the part of the Government and the Fleet Corporation.

That the form of contract adopted was more favorable to the Fleet Corporation and the Government than a lump sum contract would have been was expressly found by both the District Court (R. 736) and the Circuit Court of Appeals (R. 2330). Both courts, as well as the Master, also found that the form of contract adopted was more advantageous to the Fleet Corporation and the Government than a straight cost-plus contract, without the half-savings clause, would have been (F. 3, R. 684, 760, 2330).

These findings were required by the uncontradicted evidence of witnesses for both sides.*

(b) *As to the propriety of the estimated costs which were the basis of the base costs specified in the contracts.*

The petitioners complain that the estimates prepared by Brown, and which subsequently became the base prices specified in the contracts, contained allowances for possible increases in the cost of material and transportation, for anticipated decrease in the efficiency of labor, for contingencies, etc. (Br., p. 7**).

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*In view of the foregoing facts, it would be immaterial, even if it were a fact (which it is not), that Bethlehem insisted upon the use of the "half-savings" form of contract and refused to accept the work on any other basis (See pp. 58-67, *infra*).

**The statement on page 7 of the petitioners' brief that, in preparing his estimates, Brown assumed that wage rates would increase by 29 percent, that there would be a 30 percent decrease in efficiency of labor and that a flat 10 percent of the total cost should be added to cover contingencies is patently inaccurate. 29 percent for increase in wage rates was Brown's estimate of the increase that had already taken place at the date of his estimates, as compared with the wage rates paid on Hull 253 which had been completed in June, 1917, and on the cost of which his estimates were chiefly based (R. 1534); the 30 percent allowance for decrease in

In his letter of December 13, 1917, to which reference has already been made, Powell said (F. 11, R. 683-4, Exh. G-104, R. 1806, offered, R. 875):

> "It is proposed, however, that they [the ships to be built] be constructed on the basis of actual cost plus a fee, with an agreed upon *probable cost,* this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation."

"Probable cost", by definition, necessarily includes allowances for probable increases in the cost of materials and of transportation, for probable decreased efficiency, and for contingencies.

In the same letter the basis (and the purpose as well) of the fees and estimated costs to be inserted in the contracts was thus described:

> "The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as

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efficiency of labor included loss of efficiency which had occurred since the period of construction of Hull 253, as well as anticipated further loss in efficiency (Exh. G-154, R. 1852, offered, R. 920; Exh. B-33, R. 1931, offered, R. 1537; R. 604-5), and about half of the 10 percent allowance for contingencies represented the estimated cost of navigating and hotel equipment and war zone requirements, which had not entered into the cost of Hull 253 (Exh. G-155, R. 1857, offered, R. 921; R. 857, 930-1, 1054-6). Moreover, the statement on page 7 of the petitioners' brief that "The allowance for a rise in material price was admittedly excessive" is without support in the evidence, as is established by the very record references cited in petitioners' brief in its support.

> today existing, of Ten Percent (10%) of the present estimated cost of construction." (F. 11, R. 684, Exh. G-104, R. 1808.)

In his letter of December 19, 1917 (Exh. G-109, R. 1821, offered, R. 882), in which estimated base costs were submitted, Powell was even more specific as to their composition, saying (R. 1825):

> "As stated in this Company's letter of the 13th instant, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction but, based upon a close study of the facts affecting cost, and the knowledge of increase therein in the last two years, *and making allowances as seem reasonable to cover the next eighteen (18) months the period of construction of these vessels*—the estimates for the 10,000-ton tank vessels and the 7,400-ton cargo vessels are, as follows. * * *"

The estimates submitted in this letter were based upon estimates theretofore prepared by Brown, to which Powell had added approximately 5% (F. 17, R. 686).

In the negotiations which took place in January, 1918, "the contracts were closed substantially on the basis of Brown's estimates" (F. 18, R. 686). The Master found that the method used by Brown to arrive at his estimates "was a reasonable one"; that the estimates "were as accurate as could be expected under the uncertain conditions prevailing at the time"; that they were fairly and honestly made; that they "represented reasonable estimates of probable cost"; that there was no "misrepresentation or fraud" on the part of Bethlehem in the negotiation of the contracts (F. 8, 9, 23, 24 and 26, R. 683, 688-9); and that the base prices were agreed upon by a process of barter

and trade in "dealings * * * at arm's length" (F. 20, R. 686) conducted on behalf of the Fleet Corporation by shipbuilders as experienced and competent as those representing Bethlehem (R. 527; F. 19, R. 686).*

The Master also found that, in order "to keep down the cost" and thus carry out the purpose of the contract, it was "essential that the estimated or base cost should be sufficiently liberal to afford a reasonable opportunity to the contractor to cut under it", and that it was so intended and understood by the Fleet Corporation (F. 12-4, R. 684-5).

The above-mentioned findings were not challenged either in brief or argument before the District Court, or before the Circuit Court of Appeals. They are not now challenged by the petitioners, nor are they susceptible of

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*The Master found that the representatives of the Fleet Corporation checked the estimated costs submitted by Bethlehem, with prices being quoted by other shipbuilders (F. 22, R. 688; also R. 534), and had other means of checking them (R. 538; Rulings on Government's Requests No. 121, R. 619; No. 125, R. 620; No. 139, R. 624). Quite aside from this, however, it is perfectly obvious that had the representatives of the Fleet Corporation requested the submission of the bases of the estimates, and of the basic data upon which they were predicated, they could have checked them within a few minutes, and, through the use of such basic data and the application thereto of such factors of increase as the representatives of the Fleet Corporation might have thought to be appropriate, provided themselves with counter-estimates.

The suggestion which has been constantly repeated throughout this case that the Fleet Corporation and its representatives were helpless when it came to the determination of base prices, and that Bethlehem's representatives had greater ability to determine the probable cost of the vessels to be constructed, is and always has been completely mythical (see pp. 62-68, *infra*).

challenge in view of the evidence of all of the parties, including witnesses called by the Fleet Corporation. It thus appears that it was understood and intended (1) that base cost should contain allowances for those probable increases in cost now complained of by the petitioners, and (2) that it was not to represent "a close estimate of the bare cost of construction," but was to be sufficiently liberal to offer an incentive to the contractor to keep the cost down, to the mutual advantage of the Fleet Corporation and the contractor.

(c) *As to the manner in which the half-savings clause was intended to operate, and the results accomplished thereunder.*

The contracts provided in very simple terms that the contractor should receive one-half of the amount, if any, by which actual cost should be lower than estimated cost, after adjustment for wage increases, and changes and extras. They did not provide that the resulting difference should be thus divided between the Fleet Corporation and the contractor only to the extent that it might be proved to have resulted from increased efficiency in the handling of labor or material, or in the management of the business; nor did they set up any standard of "efficiency", or provide any formula by which an "increase" in efficiency might be measured. In view of Bethlehem's statements as to the composition and purpose of the base costs submitted, and of recognition upon the part of representatives of the Fleet Corporation that the estimates must be sufficiently liberal to afford a reasonable opportunity to "cut under them", the omission could not have been inadvertent.

The Master found that it was intended that Bethlehem should "participate in savings however earned", although it expected to produce savings by increased efficiency (F. 173, R. 637).

In their Statement, and in the argument which follows in their brief, the petitioners say that that finding is inconsistent with other findings made. For reasons hereinafter stated, it clearly is not. But whether inconsistent with other findings or not, it is the only finding consistent with the terms of the contract, the purpose of the parties, and their mutual understanding as to the composition of the base costs inserted in the contract.

For the Fleet Corporation was well aware of what it was doing when it signed the half-savings contracts. Before they were signed, Piez consulted with the Navy Department's representatives, Admiral Taylor and Mr. Franklin D. Roosevelt, then Assistant Secretary of the Navy; and Piez preferred to have the same kind of a contract as the Navy Department had (R. 1501).

Like the Navy Department, the Fleet Corporation entered into the half-savings contract with a very simple idea in mind, *viz.*, that that form of contract offered, on the one hand, an escape from the difficulties of agreeing upon a firm price at any reasonable figure, and that it furnished, on the other hand, a safeguard against the tendency to waste involved in straight cost-plus contracts, in that it gave the contractor a strong incentive to economize, for the mutual benefit of both parties. This simple "device", as Piez called it, worked out so well with the Bethlehem contracts that, as the Master found, the ships constructed by Bethlehem cost the Government less than did similar ships built by other companies, including old line shipbuilders,

either under lump sum or cost plus contracts (R. 554, 568). The Master found (R. 568):

> "The testimony in the record justifies the conclusion that with or without adjustment to reflect the difference in specifications, the cost to the Government of the vessels built under the Bethlehem contracts was less, for the value received, than the cost under contracts with other shipbuilders".

(d) *As to the contracts involved in the case.*

Between about February 1, 1918, and a date subsequent to July 15, 1918, as of which date the last of them was dated (R. 295), Bethlehem entered into 18 separate contracts with the Fleet Corporation, under which it constructed 83 ships of various sizes and types. 8 of such contracts, covering the construction of 51 ships, were dated December 31, 1917, and were executed February 1, 1918 (R. 552, 589). 7 of such 8 contracts are among the 13 which the petitioners attack before this Court.

The remaining 10 of such 18 contracts were entered into after February 1, 1918. 8 of such 10 contracts covered the construction of ships of types and sizes similar to some of the ships covered by the earlier contracts; and of such 8 later contracts, 6 are among the 13 now under attack by the petitioner.

The amount of the judgment recovered by Bethlehem in the action at law is $5,272,075.10. Of that amount, the following amounts were conceded, by stipulation of the parties (Exhs. A, B, D, R. 1642, 1713, 1721, offered, R. 819, 820), to be due to Bethlehem on account of contracts other than the 13 now under attack:

For completed ships:		
Under Contract 182 S. C.		$ 178,989.03
Under Contract 465 S. C.		935,306.22
For canceled ships and contracts:		
Under Contract 465 S. C.	$286,462.49	
Under Contract 313 S. C.	84,044.29	
Under Contract 340 S. C.	286,173.58	
	$656,680.36	
Less overpayments on canceled Contract 312 S. C. and on ships canceled from Contract 301 S. C.	147,473.50	509,206.86
		$1,623,502.11
Bethlehem's recovery also includes (Report, R. 563) the following additional amounts claimed in its Nineteenth and Twentieth causes of action (R. 104-7) and admitted to be due to it (Exh. D, par. 5, R. 1722; R. 1631-2):		
For Curtis marine propelling equipments (also referred to as Perley Morse deduction)		$ 90,019.25
For reconditioning property at Wilmington		2,570.00
Undisputed amount due to Bethlehem		$1,716,091.36
Deduct miscellaneous off-sets concededly due to the Fleet Corporation, not directly concerned with any of the above-mentioned contracts (R. 563)		201,096.43*
Undisputed amount included in Bethlehem's recovery of $5,272,075.10		$1,514,994.93

*Through an oversight, we neglected to deduct this amount in setting forth the above schedule in our brief in opposition to the petition for certiorari.

Thus, of the amount of the judgment, only $3,757,080.17 represents amounts found to be due under the 13 contracts now before the Court. That amount breaks down as follows:

Due under 7 contracts dated December 31, 1917	$1,185,342.84
Due under 6 later contracts	2,571,737.33
	$3,757,080.17

The contentions that the contracts were unconscionable, that the circumstances of their negotiation made them invalid, and that they were enacted under duress, obviously do not apply to any of the contracts in respect of which the terms were fixed by the Fleet Corporation itself, after an actual study of the factors involved in fixing a base cost for the purposes of the half-savings clause. Such clearly was the situation in respect of the six later contracts, as to each of which the Master found (R. 554):

> "The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the 'base cost' of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they [the representatives of the Fleet Corporation] fixed the 'base cost' of all of these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances".

Thus, except in so far as the petitioners contend that the half-savings clause was invalid *per se*, or that recovery under it may not be had in the absence of proof of savings obtained by some special efforts to increase efficiency, the petitioners' attack is directed only at the seven contracts dated December 31, 1917, on which Bethlehem has recovered a total of $1,185,342.84.

On the other hand, the petitioners are seeking, not only to prevent recovery of the $3,757,080.17 found to be due under the 13 contracts, but, both by counterclaim in the law action and by the bill in equity, to recover some $8,000,000 which the Fleet Corporation paid pursuant to the half-savings provisions of those contracts, more than half of which was paid under the above-mentioned six later contracts. When the petitioners say in their brief that "Bethlehem can recover none of the additional $12,000,000 profits which it claims under the bonus-for-savings provisions of the contracts" (p. 15), what they mean is that Bethlehem must be denied recovery of some $3,750,000 of the sum which the judgment awards it, and that it must make good to the Government for an additional $8,000,000 of payments already received, plus whatever interest the Government would be entitled to receive.

The events which the case involves occurred 23 years ago. The case has been in litigation for more than 15 years. It was tried twice, before two Special Masters. Four years elapsed between the issuance of the Second Master's proposed report, which found in Bethlehem's favor exactly as did his final report, and the date when, having withheld the report so that the petitioners might submit a new set of findings, his final Report was issued. More than six years

have elapsed since the issuance of the final Master's Report.

The judgment in favor of Bethlehem was awarded after twenty years without interest, and is in the amount of $3,272,075.10. If discounted on a 4% basis for twenty years, the value of the judgment is approximately $2,406,000. The amount admittedly due to Bethlehem ($1,514,994.93) aggregates, with 20 years' interest at the same rate, approximately $2,727,000. Thus it will be seen that, if our basis for interest and discount is even approximately correct, the collection of the judgment in 1941 would yield Bethlehem a recovery of less value than the amount that is admittedly due to it under the contracts.

SUMMARY OF ARGUMENT

I

The contention that the contracts permit payments under the half-savings clause only upon a showing that Bethlehem, by special efforts, increased its efficiency, is opposed to the plain and unambiguous terms of the contracts themselves, to the intention of the parties, and to the findings of the Master and of the courts below.

II

The contention that Bethlehem made no efforts to increase efficiency, and that savings did not result from such efforts, is not supported by either the findings or the evidence, and is contrary to both the findings and the evidence.

III

The authorities cited by the petitioners do not support the proposition that the "half-savings" provision of the contracts was without consideration.

The half-savings clause is not severable from the other provisions of the contracts in respect of payment to be made to the contractor and is not dependent for its validity upon an independent consideration.

The contracts were not unconscionable.

IV

The contentions of the petitioners that the contracts were made under circumstances amounting to duress and are unconscionable, either because of the circumstances under which they were negotiated or for any other reason, are without support either in fact or in law.

V

Petitioners' arguments amount to a contention that all bonus-for-savings contracts are invalid, and beyond the power of the Government to make. The contention is without basis in law.

VI

The petitioners are asking this Court to exercise a function of Congress in respect of the regulation of profits,

ARGUMENT

I

The contention that the contracts permit payments under the half-savings clause only upon a showing that Bethlehem, by special efforts, increased its efficiency, is opposed to the plain and unambiguous terms of the contracts themselves, to the intention of the parties, and to the findings of the Master and of the courts below.

The contracts are clear and unambiguous, and admit of but a single interpretation, and that directly contrary to the contention of the petitioners.*

In express terms they provide that Bethlehem shall be paid one-half of the difference, if any, between actual and estimated costs, from whatever cause occurring. The contention that it shall be paid only such part of the difference as may be demonstrated to be the result of "increased efficiency" is thus contradicted by the contracts themselves.

The petitioners say that the contracts must be "interpreted as a whole", and point to other provisions which they contain. But they fail to point to any provision which is inconsistent with the plain language of the clause in question, or which gives rise to any ambiguity in its terms.

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*The governing contract provision upon the interpretation of which this point turns is set out at page 32 of the petitioners' brief, and is as follows:

> "Should the actual cost be less than the estimated * * * cost * * *, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of * * * $210,000 one-half the amount by which such actual cost of each vessel falls short of the estimated cost * * *." (Article XIX, R. 117.)

The petitioners seek to have the contracts construed as if the provisions for payment to Bethlehem in addition to the fixed fee were (1) that Bethlehem should share in any amount by which actual cost should be less than the estimated cost provided in the contract, (2) but only if such saving in cost should result from increased efficiency in the construction of the ships and (3) the burden should be on Bethlehem to prove that the saving had so resulted. The contracts did not so provide. If they had Bethlehem would have been undertaking to engage inevitably in a lawsuit on each contract under which it might claim additional compensation by reason of savings accomplished. This would have been true because it would have been impossible to specify in the contracts any formula by which the extent to which savings had resulted from increased efficiency could be measured.

The petitioners in their brief talk about existing efficiency at the time of entering into the contracts, as if they conceived that to be a fixed and determinable quantity from which to begin to measure efficiency accomplished in the performance of the contracts. No such starting point was capable of determination either at the time of making the contracts or thereafter. No formula has ever been, or can be, devised by which to determine the degree of efficiency of a shipbuilding plant at any given point of time.

Had the contracts been intended to limit Bethlehem's sharing in savings accomplished to such as should be accomplished by demonstrated increase in efficiency, it would also have been necessary to specify of what increased efficiency should consist; whether it should be confined, as the Government claims, to an increase of the efficiency of labor as compared with the date of the contract, or should include

a reward for overcoming any decreased efficiency of labor due to the large expansion of forces and the hiring of huge numbers of green and unskilled men (R. 1346-48), efficiency in the purchase and handling of materials, including the prevention of waste and of increased cost of materials resulting therefrom, efficiency in general management and supervision or what not. Relative degrees of efficiency in each of these fields in the construction of 88 ships in five yards over a period of eighteen months or more could have resulted only in lawsuits in the absence of some formula set up in advance for their ascertainment which, as we have said, it would have been impossible to devise. Instead of attempting to do so the parties to the contracts provided therein the simple mathematical formula whereby the application of the "half-savings" clause was made dependent upon the relation between actual cost and estimated cost, a fact readily ascertainable. Both parties so understood the contract provisions and the Master so found (R. 637).

The petitioners say (Br., p. 39) that it would have been simple to provide a formula by which the effect of increased efficiency upon cost could have been determined with that nicety required by their interpretation of the contracts in order to insure justice to both parties. If that be so, then the omission of such a formula is all the more significant, and emphasizes the contention that the contracts are to be interpreted as written.

It is, of course, elementary law that, since the contracts are clear and unambiguous, all prior negotiations were merged therein, and their terms may not be varied by parol evidence. Were the rule otherwise, it would not help the contention of the petitioners, because what occurred during the negotiations only emphasizes that the parties in-

tended the so-called "half-savings" clause to apply as it was written.

First, as we have pointed out, Bethlehem's proposal of December 13, 1917 (F. 11, R. 684, Exh. G-104, R. 1807-8, offered, R. 875), was that the base prices should represent "an agreed upon probable cost", which, of course, would include allowances for probable changes in cost and for contingencies.

In the same letter of December 13, 1917, as we have pointed out, Powell informed the Fleet Corporation that the bases "of fees and estimated cost" were to be "such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as today existing, of Ten Percent. (10%) of the present estimated cost of construction." (*Ibid.*) The fixed fee proposed was approximately 10% of the estimated or base cost submitted. The Fleet Corporation was thus advised that the estimated costs submitted were not only to be estimates of probable cost—as such expression would be commonly understood—but were to be sufficiently liberal, if Bethlehem's job should be well done, to absorb all war and excess profits taxes and leave the fixed fee as net earnings (R. 553-4).

Third, Powell's letter of December 19 made it entirely clear that the proposed base prices or estimated cost of the several types of ships included allowances for probable increases of cost during the period of construction (Exh. G-109, R. 1825, offered, R. 882).

The representatives of the Fleet Corporation took no exception, nor did any witness who testified in the case take exception, to the use of "probable cost" as the base prices, or to Bethlehem's suggestion that the base price be such as to offer a reasonable probability, if the contractor's

job should be well done, of a 10% net earning after war and excess profits taxes, or to the inclusion in probable costs of reasonable allowances for probable increases and for contingencies. On the contrary, as the Master found, the representatives of the Fleet Corporation checked the estimated costs with prices being quoted by other shipbuilders (footnote p. 13, *supra*).

The petitioners' witness Sanford, who was put on the stand to attack Brown's estimates of cost, testified that he himself would have used the same method of estimating (R. 1316), and differed with Brown only as to some of the factors which he used in his estimates.

Moreover, the use of fairly liberal estimates of cost was not only acceptable to the Fleet Corporation, but became an enunciated policy of the Fleet Corporation, as witness the report of Piez, the General Manager of the Fleet Corporation, to its board of directors, under date of October 9, 1918, in which it was said (R. 552; Exhibit B-6, R. 1901, offered, R. 1503, 1530):

> "In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.
>
> "We discussed this matter with the Board at the time the commitments were made last Spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent."

Thus, it was the settled policy of the Fleet Corporation, when using half-savings forms of contracts, which were not peculiar to Bethlehem (R. 1502), to make the estimated costs sufficiently liberal so as to make reasonably sure that the contractor would have the necessary incentive to keep the costs down (R. 551-2, Exh. B-6, R. 1900, 1901, offered, R. 1503, 1530; F. 13, R. 685).

Piez, who believed in bonus-for-savings contracts, and had had experience with them in his own business, testified as to the technique of fixing base prices (R. 1500-1):

> "The price had to be placed for actual cost, if we knew the cost, plus an allowance for contingencies, plus an allowance for incentive, plus the fee. So we start out with bare cost; then in order to meet any contingencies that may happen, add some allowance for contingencies; in order to give a proper incentive, add an incentive allowance; and then add the fee."

If the plain words of the contracts did not make sufficiently clear what the parties had in mind when they adopted the half-savings clause, their intentions would be made entirely obvious by Bethlehem's written proposals, by the evidence as to the Fleet Corporation's policy, and by the testimony of Piez, the responsible and active official of the Fleet Corporation who was authorized to make contracts on its behalf.

Piez reported to the Board of Trustees of the Fleet Corporation (R. 1901):

> "The best device that we have found for that purpose [*i.e.*, as stated in the preceding sentence, to provide some incentive on the contractor's part to holding the cost down] is to fix an estimated basis

> cost satisfactory to ourselves and give the contractor a share in savings, if the actual cost be less than the estimated basis cost."

The Master found, and both courts below sustained his finding, that Bethlehem was to share in the savings, however earned, but expected that it would produce such savings by increased efficiency (F. 173, R. 637).

Before the Master, the petitioners' contention that the contracts (or the first series of them, dated December 31, 1917) were induced by fraud was based in part upon the argument (1) that the parties intended to fix base prices which would not permit Bethlehem to effect savings except by an increase in efficiency, (2) that the prices were not so fixed, and (3) that the reason why they were not so fixed was that Bethlehem presented, and the Fleet Corporation accepted and relied on, cost estimates that were intentionally swollen and inflated. These arguments were presented to the Master in a long series of Requests to Find (Nos. 154-5, 159-62, 166-73, R. 631-7), and the Master denied each and every one of them. The last of such requests was as follows:

> "173. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that under the 'half-savings' form of contract Bethlehem was supposed to participate only in such 'savings', if any, as were earned and made possible by its efforts and ability to reduce cost by increasing efficiency."

Upon this request the Master ruled as follows:

> *"Denied. Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency"* (R. 637).

The petitioners repeatedly urge in their brief (specifically at pp. 7 and 16, and impliedly at pp. 36 and 44) that that finding must be taken at less than its face value because, they say, it is inconsistent with the Master's affirmance of the petitioners' Request No. 174 (R. 638), in affirming which the Master said:

"Affirmed, but see also 170, 171 and 173."

The Master thus clearly showed that in affirming Request No. 174 he had no intention of qualifying, or modifying in any way, his finding in response to Request No. 173, quoted above, that Bethlehem was to participate in savings however earned.*

It will be noted that none of the petitioners' Requests for Findings, above cited, suggests that the parties intended to write the contract so that by its terms Bethlehem would share in savings only to the extent that they might

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*Moreover, petitioners, in each of the references in their brief to Finding No. 174, distort its meaning by omitting the words indicated by brackets in the following quotation of the finding:

> "174. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that participation in 'savings' was supposed to represent [a bonus or additional compensation to be earned by Bethlehem as] consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing."

Even without a reading of the finding in its context, among the Requests which preceded and followed it, and even without the Master's cross-reference to the preceding findings, it would be clear enough that the Master did not intend the word "consideration" to be read as the petitioners are attempting to read it.

be the result of an increase in efficiency above some basic standard. On the contrary, all such Requests for Findings assumed, in accordance with the theory of the Bill of Complaint and the Affidavit of Defense, that the contracts were written just as the parties intended and that, being so written, they must be set aside because they permitted Bethlehem to share in savings realized on base costs which were fraudulently inflated.

The present contention is an attempt to escape the unanimous findings below that the charges of fraud were without basis in the evidence, and to attain the petitioners' objective by asking this Court to re-write the contracts to conform to what petitioners now say that the parties ought to have intended, though the Master and both courts below have found that *they did not so intend*.

Of course, no one has ever disputed the fact that the half-savings clause was intended as a stimulus to the contractor to increase efficiency; that is its obvious purpose. But that is a very different thing from saying that the parties did not intend their contract to operate according to its terms, unless the beneficial effect of the half-savings clause was demonstrated, not only by the results achieved, but by a judicial appraisal of the extent to which the achievement was due to "special efforts" of the contractor to attain a standard of efficiency better than some contemporary standard which the parties might be supposed to have had in mind, but which they neither stated in the contract, nor mentioned in their negotiations.

In respect of the contention now made, the Circuit Court of Appeals said (R. 2329):

> "Its argument is based upon the premise that the bonus for savings was limited in its application to

savings resulting from increased efficiency. We think that the premise is without foundation in the record and the argument consequently falls. There is nothing in the contracts themselves to indicate that savings resulting from increased efficiency alone was (*sic*) intended to be compensated for. The evidence fully supports the master's finding that 'Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency.' It must be concluded that the contracts were entire and that the bonus for savings formed part of the consideration for Bethlehem's obligation to build the ships."

Finally the asserted interpretation would defeat the purpose of the contract. The Government concedes that Bethlehem would be entitled to one-half of any reduction under estimated cost due to increased efficiency (Br. p. 22). Material and other costs increased as anticipated.* The contracts contained protection against wage increases and the cost of changes and extras, but not against increase in material costs, decrease in the efficiency of labor, or contingencies, all recognized elements of probable cost. Under the form of contract adopted, and because of the absence of such protection, Bethlehem would have had no right whatever to claim anything other than its fixed fee, irrespective of the extent to which costs might have been reduced by increased efficiency, if such reduction in costs was overcome, in whole or in part, by an increase in the cost of materials or by other cost increases beyond the

*Petitioners' statement (Br. 7) that "The allowance for a rise in material prices was admittedly excessive" is not supported by the findings or the evidence, and specifically is not supported by any of the four references cited by the petitioners in its support, viz. R. 1047, 1252, 1268 and 1548.

control of the contractor. The estimates were purposely made liberal in order to afford an opportunity to cut under them.

The parties chose to treat the contract and the several elements of cost in their entirety, and provided an incentive to the contractor to keep down cost, by means of a simple formula which, as the Master and both the lower courts found, was to the mutual advantage of the contractor and the Fleet Corporation (F. 12, R. 684; R. 736, 2330).

At R. 1502 Piez illustrated that the form of contract adopted, if it resulted in increased profit to the contractor, resulted also in reducing the cost of the ships to the Fleet Corporation as compared with the cost to the latter under a lump-sum contract based on the same estimated cost.

It might be that, looking back 23 years, and in the light of knowledge of what actually happened in the performance of the contracts, one might think it better to have fixed a base cost which, instead of being liberal, was an estimate of bare cost at existing wage and price levels; to have protected the contractor against all elements of increase beyond its control and to have made the contractor's share of savings dependent upon a comparison of the estimated cost, as adjusted for all such increases, with the actual cost ascertained on completion of the vessel. Or, looking backward, it may appear preferable to have imposed some limitation on the operation of the "half-savings" clause, or to have devised some formula more elaborate than that which the contracts provided.

But the parties, with their eyes open, chose to adopt the simple device of a "half-savings" clause, believing it to be to their mutual advantage (R. 554), as did also the Master and both courts below (F. 12, R. 684; R. 736, 2330). It

turned out to be so, since the ships built under the contracts in suit cost the Fleet Corporation, as the Master found, "less, for the value received, than the cost under contracts with other shipbuilders" (R. 568).

Whether the contracts, interpreted according to their terms, were unconscionable, or were opposed to public policy, or were unsupported by adequate consideration, are questions of law arising under the contracts as written. There is no warrant, however, for interpreting the contracts otherwise than in accordance with their express terms.

II

The contention that Bethlehem made no efforts to increase efficiency, and that savings did not result from such efforts, is not supported by either the findings or the evidence, and is contrary to both the findings and the evidence.

The petitioners commence their argument (Br. 15) with the bald assertion that "The Master and the District Court found that there was no evidence that the difference between the actual and estimated costs of the vessels was due to any increase of efficiency due to Bethlehem's efforts. The opinion of the court below is in accord".

Neither the Master nor the District Court was asked to make any such finding; nor did either make any finding which has even a semblance of such a meaning. And the Circuit Court of Appeals found precisely to the contrary (R. 2330).

Nor is there any finding or any evidence to support the petitioners' assertion (Br. 16)—which is the underlying premise of much of their argument—that "the cost of the

vessels constructed by Bethlehem would have been the same, if the contracts had contained no bonus-for-savings clause" —if, in other words, the contracts had been straight cost-plus contracts.

That assertion, which flies in the face of the findings of the Master and both courts below that the half-savings provision of the contracts was advantageous to the Fleet Corporation, and in the face of testimony of witnesses for both sides that straight cost-plus contracts inevitably involve waste and disorganization (R. 1338-9, 1499, 1622), is based upon a single finding of the Master, and upon certain cost comparisons which petitioners make and from which they draw the inference that Bethlehem made no special effort to reduce costs, but that the low costs which it attained were due solely to the fortuitous circumstance that the ending of the war resulted, automatically and with no effort on Bethlehem's part, in an increase in the efficiency of labor.

The single finding of the Master on which the petitioners rely is No. 279 of their Requests for Findings (R. 678). It is as follows:

> "There is no evidence that the cost of construction of the respective tank and cargo ships in controversy was reduced as a result of the 'bonus-for-savings' provisions of the respective contracts."

Obviously that finding does not mean that Bethlehem made no effort to increase efficiency, nor does it mean that efficiency was not increased, or that anticipated losses of efficiency were not prevented, by virtue of Bethlehem's efforts. The finding means no more than it says. Respondents did not except to it, because it is literally true, and in the nature of things it could not be otherwise. For in

order to isolate the half-savings clause of the contracts, and to show what effect it had on costs, one would have to know how much the ships would have cost if the clause had been omitted from the contracts, and the ships built on a straight cost-plus basis.

Obviously no one could give any *competent* testimony as to what Bethlehem's costs would have been under a situation which never existed. Hence, as we have said, the Master's finding No. 279 is literally and necessarily correct.

But the finding has no bearing on either of the propositions which are at the bottom of petitioners' argument. It does not establish, nor does it tend to establish, (1) that Bethlehem did not make the most strenuous efforts to increase the efficiency of its shipyards, or (2) that during the period of construction of the various ships it did not greatly increase their efficiency.

The Master did not make any finding, and the petitioners submitted to the Master not a single request for a finding, which, if found, would support either of those propositions. Except for Finding 279, above quoted, their Requests for Findings were not directed to the facts of cost and efficiency, considered in the light of what actually happened, but were stated as of the dates when the contracts were negotiated and made, and dealt with the possibilities which might result under the contracts as written.

Among such Requests for Findings there was a considerable number by which it was sought to show that the estimates of probable cost were not such as to require any increase in efficiency, in order to enable Bethlehem to participate in savings (Req. 268); that such estimates were not such as to make the amount of savings "substantially commensurate with economies resulting

from increased efficiency of management and labor" (Req. 270); that the realization of savings did not require Bethlehem to assume the risks of strikes, labor shortage or other contingencies (Req. 272); and, finally, that the estimates were not the lowest prices which would have afforded Bethlehem a reasonable opportunity to effect savings through efficiency (Req. 274), and were not "fair and reasonable estimates of probable approximate cost" of the ships "for use in connection with the 'half-savings' form of contract" (Req. 275).

All those Requests for Findings were denied by the Master, and in each instance the denial was accompanied by a statement either that the proposed finding was not supported by the evidence, or that the evidence was to the contrary (R. 675-7).

The Master's denial of those requests, and his comments thereon, are utterly inconsistent with the propositions now asserted by the petitioners; and had he been asked to find either that Bethlehem made no efforts to increase efficiency and effect savings, or that its efforts were not productive of savings, he would most certainly have denied those requests as contrary to the evidence.*

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*A necessary corollary of the petitioners' argument is that the reduction under estimated cost did not result from care in the execution of the contracts and "proved that the estimated cost was inordinately high" (Br., p. 12). The petitioners requested a finding that the savings "resulted from the gross and improper inflation of the estimates of cost designated as base prices in the respective contracts", and the Master denied such request as "not justified by the evidence" (Req. 278, R. 678).

(a) *As to Bethlehem's efforts to increase efficiency.*

The petitioners' argument that Bethlehem made no special efforts to increase efficiency, in addition to being absurd in view of the results which it produced as compared to other shipbuilders, is a curious composite of assertions which are either irrelevant or contrary to the evidence.

Cost comparisons of various ships are set forth in the petitioners' brief, and great stress is laid upon an inference sought to be drawn from the showing stated to be made thereby, that the only element of cost showing a progressive decline during the contract period is the cost of labor. But there is nothing remarkable about that fact, first because material prices fluctuated widely during the contract period (Exh. B-32, R. 1932, offered, R. 1469, and the tables compiled therefrom at pp. 25-6 of petitioners' brief), and second because efficiency in shipbuilding, as in any similar activity, depends primarily upon the efficiency of labor.*

Nor is the efficiency of labor reflected only in the figures for "Labor". The ideal of operating efficiency is to maintain a labor force which will have the maximum of pro-

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*Petitioners in their statement of facts say that Bethlehem's estimates of cost for the first group of ships assumed that there would be a "42% increase in freight rates". What they refer to is the fact that an allowance of 10¢ per ton was made in the estimates for increases in freight rates and other increases in delivery costs, resulting from the disruption of transportation under the war conditions.

Freight rates actually increased 25% (General Order No. 28 issued by the Director General of Railroads May 25, 1918, United States Railroad Administration Bulletin No. 4, p. 86), and there can be no question but that other delivery costs also increased. No witness for the petitioners either criticized or made any objection to this 10¢ per ton allowance.

ductivity, which will require the minimum of supervision, and which will handle the material so as to reduce to the minimum the amount of spoilage—a very important factor in the conditions existing while the ships in question were being built (R. 1348). Efficiency of labor is thus a major element in both material costs and plant operating expense.*

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*With reference to the tables at pages 25-6 of petitioners' brief, petitioners say (Br. p. 27) regarding the contracts there shown that the cost of materials, as compared with earlier contracts, rose in four instances and fell in four. That statement is literally true. But the petitioners have failed to direct the Court's attention to the fact that, in making three of the four comparisons in which the cost of materials was greater, they have in one case compared the cost of materials under later contracts with the cost under contract No. 191, which covered the construction of four so-called stock ships, for which substantially all the materials had been purchased and were on hand when the contracts were negotiated (F. 97, R. 612), and in the other case have compared the later cost with the cost of materials under contract No. 196 for the construction of another stock ship, for which likewise the materials had been purchased before the contract was negotiated (F. 99, R. 612). A stock ship was one that Bethlehem had designed to build for its own account before the requisition order of August 3, 1917 (R. 1949). The record does not show how the unit prices of materials under the earlier contracts compared with those for the later contracts, but presumably they were lower.

The petitioners are left, therefore, with but one comparison (the first on Br. p. 25) in which the cost of materials under a later contract was greater than the cost under a comparable earlier contract. Since both of these latter contracts cover construction on the West Coast, the increased cost of materials could well have been due to increase in freight rates. (See footnote, p. 37. The later contract, No. 301, dated April 30, 1918, was executed and delivered on May 27, *1919*. Exh. A; R. 1697.) In any event the cost of the tankers was less by $110,000 each under the later contract than under the earlier contract (Br. p. 25). This result does not reflect any failure to increase efficiency.

The magnitude of Bethlehem's problem, in relation to labor efficiency, can be seen from the fact that between January 1, 1918, and the peak of production in 1919, the number of employees in its shipyards was increased from some 15,000* to over 70,000, the additions to the force being, as graphically described by a witness, "Shoemakers, doctors, merchants, cloth weavers, almost anybody who happened along and wanted a job at good wages" (R. 1347). Not only was it necessary for Bethlehem to train these new men, but it was necessary to replace its skilled and experienced shipbuilders, who were being taken away for supervisory positions in the various new shipyards which had sprung up to meet the emergency (R. 1348).

The methods which Bethlehem was using to train such men and attain greater efficiency of labor are referred to by the Master in two findings, which he made at the request of the petitioners (R. 608):

> "87. During 1917 Bethlehem changed many of its old established shipbuilding methods under which a workman had been trained to do a great many different things, and substituted a system of specialization, which was being very rapidly developed during the latter part of that year, under which it was possible to train workmen very rapidly for the particular or special work assigned to them."
>
> "88. The various methods adopted by Bethlehem with respect to training workmen and increasing their efficiency were being very rapidly developed during the latter part of 1917."

That the efforts of Bethlehem as set forth in the findings continued in full vigor throughout the period of the con-

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*Even this number was double the force employed prior to the war (R. 1347).

tracts is not denied by the petitioners. Nor is it suggested that the training of men while the force increased by 55,000 after January 1, 1918, was not an infinitely greater task, requiring much greater efforts, than the training of a small fraction of that number in 1917.

But all those efforts are brushed aside as irrelevant, on the ground that they were started before the contracts were signed (Br. 29-30), the petitioners' theory apparently being that efforts to increase efficiency after the signing of a contract must be disregarded unless they are different in kind, as well as in degree, from efforts antedating the contracts. The absurdity of that contention is too apparent to require further argument.

It may be that, if the ships had been constructed under a lump sum contract, Bethlehem might have made greater and more successful efforts to keep the cost down, and yet the result would have been that the ships cost the Fleet Corporation more and yielded to Bethlehem a greater profit. The Master found that the estimates were as nearly accurate as could be made under the circumstances; consequently estimated cost represented the minimum at which any contractor would have been justified in taking the contracts on a lump sum basis. Had the ships been built under lump sum contracts for the amount of the estimated cost and fixed fee, with Bethlehem getting all the benefits of savings made, and thus getting much greater profits than were actually realized, we understand that the petitioners would not complain unless it be true, as suggested in their petition for certiorari, that no contract with any Governmental agency in time of war is binding, and that whatever the contract or the result, it is for the courts to determine how much the contractor should receive.

Petitioners object to Bethlehem's profits, though admittedly less than would have been realized under fixed price contracts, on the ground that the half-savings contracts were "riskless" contracts; and they seek to have this Court accept, and enact into law, an economic doctrine that "profits * * * are a reward for the assumption of risk" (Br. 62).

But profits may be considerably more or considerably less than a reward for the assumption of risk in a particular transaction. In the present case they may be regarded, in part, as a reward for the assumption of the risks taken by those who had invested tens of millions of dollars in the plants and business of Bethlehem (Exh. B-12, R. 1932, offered, R. 1540); for the business foresight which built up those plants, in a very few years prior to 1918, to a point where it was, as petitioners say, "the largest shipbuilding company in the world", and to a point of operating efficiency where it was able to undertake the gigantic program of shipbuilding which the Navy Department and the Fleet Corporation entrusted to it.*

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*The Circuit Court of Appeals said (R. 2329):

"It must be recalled, as the special master pointed out in his report, 'that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long-time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes, and other carrying charges. All of these, however, were charges incident to the standby service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives

Profits also may be a reward for devotion of property and management to a task, for services performed, ships built and results achieved. That is what they were intended to be in this case. The possibility of profits, over and above the fixed fee, was held out by the Fleet Corporation to the contractor as an incentive to activities which, if successful, would be beneficial to the Fleet Corporation and, therefore, indirectly to the Government.

The reward was offered; the hoped-for result was produced; and it seems hardly within the scope of the judicial function for this Court now to throw aside contracts made 23 years ago, and to re-write them so as to apportion differently the benefits which the contractor and the Fleet Corporation had agreed to share.

Petitioners' glib assertion that Bethlehem's "cost of construction" of the ships would have been the same under a straight cost-plus contract is without support in the findings or the evidence. Of course, as we have pointed out, no one could prove what costs would have been under a straight cost-plus contract. But the principal representative of each of the contracting parties, Piez (R. 1499) and Powell (R. 1238-9), testified from his own experience that cost-plus contracts are demoralizing, and an invitation to waste. It is well known that straight cost-plus contracts worked out very badly in many situations during the World War, and that during and after the War Congress in a

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of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company to insure the continuous service of Bethlehem so long as the war needs might call for it'."

number of appropriation bills* specifically forbade the use of the cost-plus form of contract. The defect in cost-plus contracts is due, not to deliberate inflation of costs on the part of the contractor, but to the difference in the psychological responses of an organization of many human beings to incentive on the one hand, and to lack of incentive on the other.

But, as we have said, there was no evidence, and there could be no evidence, as to what Bethlehem's costs would have been under a straight cost-plus contract, except opinion evidence as to what ordinarily happens under such contracts. So far as there is opinion evidence in the record, it is unanimously to the effect that the costs would have been higher under simple cost-plus contracts, and that therefore, as found by the Master and by both courts below, the contracts were more advantageous to the Fleet Corporation than simple cost-plus contracts would have been.

That Bethlehem's efforts, under straight cost-plus contracts, would have been as vigorous as those which it made under the half-savings contracts is of no importance, since both Bethlehem and the Fleet Corporation believed that those efforts would be more successful under the latter type of contract than under the former.

Moreover, no witness for the petitioners criticized those efforts, or suggested that the Bethlehem organization, from the president to the lowest rank of workmen, did not commit itself wholeheartedly to the enormous and difficult task of building, at top production speed, 83 ships for the Fleet Corporation, in addition to a large number of ships for the

*E.g., Act of May 16, 1918, 40 Stat. 550; Act of March 6, 1920, 41 Stat. 503.

Navy. The Master found that the Government had greater "value received" from that organization than from other shipbuilders (R. 568); and Bethlehem is content to be judged by the results.

(b) *As to increases in efficiency actually realized.*

In arguing the proposition that Bethlehem's efforts to increase its efficiency produced no result in savings, the petitioners seem to assume that an ascertainable standard of efficiency* existed in the yards at the time when the contracts were signed, and when a total of some 15,000 men were employed; that, without any efforts on Bethlehem's part, that standard would automatically continue to exist while the force was being increased to 70,000, and that Bethlehem's efforts must be regarded as non-productive, unless the per man efficiency average of the 70,000 men can be shown to have been greater than that of the 15,000 men. These assumptions take them through the first 9 months of the contract period (during which the greatest

*There is considerable confusion in the petitioners' brief as to the base or norm from which one might determine whether there had been an "increase" in efficiency. On page 16 they refer to "the normal standards of efficiency" (but without indicating, either there or elsewhere, how anyone could determine what standards were "normal"). At other points in their brief they appear to be referring to the standards of efficiency, whatever they may have been and however they might be determined, which existed in the Bethlehem yards at the time when the contracts were made.

One would suppose that "normal standards of efficiency" would be those generally prevailing among shipbuilders at the time, and that the organization which produced the ships at the lowest cost would be ranked, *ipso facto*, as the one that had attained the greatest success in bettering the "normal standards". However, petitioners appear to think otherwise.

expansion of the labor force occurred) and up to the time of the Armistice; and they argue that, during that 9-months' period, labor efficiency was not increased.

The petitioners concede that labor efficiency was greatly increased from then on. But, because some of the conditions which made the labor problems difficult ended with the Armistice, they argue that any increase in efficiency following that time must be attributed solely to the ending of the War, and must be regarded as having come about automatically, without any action or effort on the part of Bethlehem, and therefore must be treated as being purely fortuitous and in no part attributable to Bethlehem's managerial efforts.

In other words, the petitioners' argument is based upon the proposition that if, in spite of Bethlehem's efforts, there was an increase in labor cost prior to the Armistice, those efforts must be disregarded, however much they may have reduced the cost of the ships; and that, because the ending of the War made it easier for Bethlehem to increase the efficiency of labor, its efforts after that date must be disregarded, however much they also may have reduced the final costs.

The Circuit Court of Appeals, after finding that the half-savings form of contract was a desirable one from the standpoint of the Government, said:

> "We need only add that the record contains some evidence tending to show that the savings resulted, in part at least, from increased efficiency" (R. 2330).

This statement is fully sustained by the evidence and is, in fact, demonstrated by the tables set forth in the peti-

tioners' brief* (pp. 25-6). That efficiency of labor increased during the progress of the contracts is also indicated by a comparison of direct labor hours (Exh. B-33, R. 1931, offered, R. 1537). The comparison is interesting in the light of the allowance made by Brown for decrease in efficiency of labor (Exh. G-154, R. 1852, offered, R. 920; R. 854) and of Powell's statement of labor conditions at the time the contracts were entered into, of his fear that they might get worse, and of his hope not only to hold them level but to improve them (R. 1367-8).

When Brown made his estimates, he had before him the completed figures for the building of a 9100-ton tanker at the Fore River plant (Hull 253). This vessel and its sister ship (Hull 254) were built between May, 1916, and July, 1917, and were the last vessels of such size and type

*Petitioners point to fluctuations in the amounts of plant operating and overhead expense incurred on ships under successive contracts at the same yard as evidence of failure to increase efficiency (Br. 27). Plant operating expense includes both cost of labor (commonly known as indirect labor) and cost of materials (as for power, heat, light, maintenance, etc.), as well as property taxes, and would quite naturally fluctuate with variations in such costs, many of which are beyond the control of the shipbuilder.

Moreover, the apportionment of total plant operating and overhead expense to the cost of individual ships is on the basis of the work being done in the yard from time to time. Such expense does not vary proportionately with any increase or decrease in the amount of work under construction, since some elements of it remain constant, or substantially so, under varying conditions of plant load (R. 855-6). The cancelation by the Fleet Corporation of ships under contract for construction at Union and Sparrows Point after work on them had been begun (Exh. A, R. 1697, 1701; Exh. B, R. 1714, 1716) naturally increased the ratio of the apportionment to other ships remaining under construction at those yards of plant operating and overhead expense.

completed before Bethlehem's estimates were submitted in December, 1917 (R. 1533-4). Brown took the cost figures of Hull 253 and estimated the increase in cost that would result from new wage rates which, at the direction of the Fleet Corporation (R. 1650), were being put into effect in November and December, 1917. He estimated that further increased cost of labor, amounting to 30 per cent., would result from decrease in the efficiency of labor already experienced since the completion of Hull 253 and further decrease therein to be expected, and made allowance therefor in his estimates (Exh. G-154, *supra;* R. 852-4).

That his findings were not too liberal is attested by the fact that a comparison of Hulls 253 and 254 with the next ships of the same type to be completed at Fore River (Hulls 268 and 269, built in the period from June, 1917, to June, 1918) shows an increase in direct labor hours of more than 40% (Exh. B-33, R. 1931).

From that point on, the trend was the other way; and the same exhibit shows that between Hulls 268 and 269, which were under construction when the first contracts were made, and the ships built under Contract No. 183 (Hulls 376, 377 and 378) there was a decrease in direct labor hours of 25%; and the same comparison for the later tankers, constructed under Contract No. 299, shows a decrease of 40%.

Powell testified that his problem at the time of the negotiations was to prevent labor conditions from getting worse than they were, and then to improve them, and that by so doing he expected to accomplish savings under the contract (R. 1368-9). When the contracts were made, the labor situation at the Harlan yard particularly was very bad, and if the conditions there had spread to other yards,

which was entirely likely, it would have removed any hopes of making any savings under the contracts, and actual costs would have "considerably exceeded the base prices * * * submitted" (R. 1367-8).

Labor conditions at the various plants were not uniform, those at Harlan being worse than those at Sparrow's Point, and those at Sparrow's Point worse than at Union and Fore River (R. 1368); but everywhere they were bad (R. 1347-8; 1498). As conceded in the Government's brief (p. 29), Powell testified that Bethlehem was "very successful under the conditions" in giving its "foremen and bosses" an incentive to increase the efficiency of the yards (R. 1369-70), although conceding that labor conditions materially improved after the Armistice. So far from testifying that improvement began then, however, he testified specifically that

> "They were better at the time of the Armistice, considerably better than they had been when we signed these contracts, but they improved more rapidly after the Armistice." (R. 1370)

The petitioners' counsel asked Powell the following question on cross-examination and he made the following answer:

> "Q. As a matter of fact, Bethlehem succeeded, as I understood it, in its efforts to increase the efficiency of labor at its various shipyards, with the exception possibly of the Harlan plant, from early in the year 1918, did it not?
>
> "A. We got better control of our labor from early in 1918, and we did improve the efficiency of our labor at all of the plants, and improved it some at Harlan, although less at Harlan than at other plants." (R. 1436)

Results accomplished at Harlan strikingly illustrate the accuracy of Powell's description of labor conditions and of the improvement made therein. They also evidence the impossibility of making anything like an accurate estimate of what costs were going to be. Contract No. 178, which was one of the original contracts growing out of Powell's proposal of December 19, 1917, included three 7500-ton tankers to be built at Harlan in addition to three cargo ships. The estimated cost of the tankers specified in the contract was $1,612,000 each. *The average actual cost, exclusive of wage increase and changes and extras, was $1,675,000* (Exh. B-32, R. 1932, offered, R. 1469), or $63,000 in excess of Brown's estimate.

The following comparison, which is also set out in the petitioners' brief (p. 26), of costs incurred on the above-mentioned tankers built under Contract No. 178 and on similar tankers constructed at Harlan under a later contract (No. 314) is interesting (Exh. B-32, *supra*):

	Contract 178	*Contract 314*
Material	$625,288	$603,895
Labor	589,094	384,586
Operating Expense	422,680	276,794

These figures show very little variation in material cost, but a decrease in the cost of labor of 34%, or, conversely stated, an increase in labor efficiency of more than 50%, with a corresponding decrease in operating expense.

This absolutely confirms Powell's testimony. It also illustrates the absurdity of the petitioners' position. They

have no complaint regarding the tankers built under Contract No. 178, because the costs over-ran the estimate and Bethlehem stands to make no profit except the fixed fee, which is less than 10% of the actual cost. Yet they complain of Contract No. 314, because Bethlehem stands to make a profit of approximately 21%, although the actual cost to the Fleet Corporation of the ships constructed under it, including fixed fee and half-savings, but exclusive of wage increase and changes and extras, is only $1,592,000 per ship as compared with $1,835,000 under Contract No. 178. In other words, the position of the petitioners is that they have no objection to paying in accordance with the provisions of the contract in the case where Bethlehem's efforts to increase efficiency proved abortive, but object to paying any premium for efficiency, even though they receive the benefit of it.

The fact is that Bethlehem performed a major feat of management in absorbing, into an organization geared for 12,000 to 15,000 employees, 55,000 green men, under the most disorganized labor conditions that have ever existed in this country (R. 1498, 1367-8).

The petitioners in their brief (p. 26) compare the labor cost in dollars under Contracts 183 and 299, and from this comparison draw the conclusion that such saving in labor cost cannot be attributable in any degree to any efforts on the part of Bethlehem, but only to the fortuitous circumstance that the War ended before the ships were completed. It has failed to direct the Court's attention to the comparison between the direct hours of labor on the ships constructed under Contract 183 (the earlier of the two contracts contained in the petitioners' table) with the

ships under construction at the time when the contracts were let, which, as stated above (p. 47), and as the exhibit shows, reflects a decrease of 25%.*

Petitioners' effort to explain away the great increase of labor efficiency which occurred over the contract period overlooks the most important of all the factors in the problem—the element of time. The training of manual workers, and the welding of a large group of untrained men into an effective working force, is not a process which occurs instantaneously. While it is true that the ending of the World War eliminated some of the conditions which made the labor problem a very difficult one, it would be absurd to suppose that the parties did not contemplate that the performance of the contracts would be subject to the

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*At page 27 of the petitioners' brief, and again at pages 39 and 50, the statement is made that Brown testified that the efficiency of labor prior to the Armistice decreased more than 30% and that all the increase of efficiency occurred after that date. This statement is obviously intended to represent a comparison of labor conditions at the time when the contracts were entered into and during the intervening period until the Armistice. The record references cited in support of the statement show that Brown's testimony was directly to the contrary and fully corroborated Powell's testimony quoted at page 48 above. Both at pages 1063-64 and at pages 1531-37 the record shows that Brown was testifying about loss of efficiency shown by a comparison of labor cost incurred on Hulls 253 and 254, the "base ships" completed in June and July, 1917, and on the cost of which he had based the estimates that he made in November and December, 1917, and labor cost incurred on Hulls 268 and 269, requisitioned ships built between June, 1917, and September, 1918 (See also Exhibit B-33, R. 1537). Brown's testimony at R. 988-89, also cited in support of the Petitioners' statement, is to the same effect. This oft-repeated statement so much relied upon in the brief is without support in the evidence.

variable conditions of life, or that they had in mind some theoretical standard of efficiency which the contractor was supposed to better. The only intelligent purpose that can be attributed to them is that the half-savings clause would stimulate the contractor to attain the greatest efficiency that was possible under whatever the conditions might turn out to be; that, in short, the contractor would do his best to overcome the adverse factors that resulted from the War and that, if the War should end, the contractor would continue to overcome such adverse factors as might still exist and attain, at all events, the maximum efficiency that was attainable.

III

The authorities cited by the petitioners do not support the proposition that the "half-savings" provision of the contracts was without consideration.

Petitioners contend (Br. 46, 49) that there is a long-established "Court of Claims doctrine" that so-called bonus-for-savings clauses in government contracts are severable from other price provisions thereof, and may not be sustained without proof of an independent consideration therefor or, more specifically, proof that savings actually resulted from some special efforts on the part of the contractor—efforts which the contractor would not have been required to make, if the contract had been an ordinary cost plus contract, without the half-savings clause.

Five cases decided by the Court of Claims are cited for that contention, which is admitted by the petitioners

to be inconsistent with the "general rule of contract law" (Br. p. 43).

No such doctrine has ever been announced either by the Court of Claims or, in so far as we know, by any other court. It is thoroughly unsound, not only as a matter of contract law but as a matter of ordinary common sense. All the Court of Claims cases cited by the petitioners except *Burke & James, Inc.* v. *United States*, 63 Ct. Cls. 36, are cases where the Government, having already in force contracts covering, for example, the making of Army uniforms out of Government-owned materials, had entered into supplemental agreements with the contractors by which the Government agreed to pay them, as an inducement to economize on Government materials, a share of the value of the materials saved by some special efforts on the part of the contractors.

In such cases, the Court of Claims applies the rule that the supplemental contract is without consideration unless the contractor is required to do something that the original contract did not obligate him to do; and that, in order to recover under the bonus-for-savings contract, he must prove that savings were effected by performance under that contract, rather than merely by the fulfillment of his pre-existing obligation under the original contract.

Thus it will be seen that the cases stand for no propositions of law more advanced than that a promise must be supported by consideration, and that a plaintiff must prove his case in order to recover.

Burke & James, Inc. v. *United States, supra*, is an entirely different kind of a case. There the Government had hired the contractor to design a model airplane camera, the rights to which had been acquired by the Government from

the inventor. The job was done and the contractor was paid $30,000. Thereupon the Government asked the contractor to bid on 200 similar cameras, and the contractor did so, quoting a flat price of $1,763 per unit.

The Government then asked the contractor to disclose the amount of profit which would accrue to it on the basis of that proposal, and the contractor advised: "Our maximum profit will be approximately 10½%."

Thereupon the Government submitted and the contractor accepted a form of contract under which the contractor would be paid the actual cost of manufacture, a fixed profit of $173 per camera, and a "bonus for savings" equal to 25% of the difference between the actual cost and the estimated cost of $1,590 each (which was the amount of the contractor's bid less the $173 fixed profit, the fixed profit thus being slightly more than 10½% of estimated cost). Actually the cost of the cameras turned out to be $634.80 each, or only 39% of the estimated cost.

The contractor sued for amounts due under the bonus-for-savings clause, and the Government counterclaimed for excess amounts paid in error on account of cost.

The court found that the Government had relied upon the accuracy of the plaintiff's estimate, plaintiff being the only one who had ever manufactured such a camera, and the Government's representatives being totally ignorant of manufacturing costs thereof; that the plaintiff's representation that $1,763 per camera would produce a *maximum* profit of 10½% had been the result of an "egregious error"; that there had not existed "the faintest possibility of the cameras costing the estimated cost fixed in the contract"; that the price was "far more than the article can possibly be worth"; that to allow recovery would

be to permit the plaintiff to take advantage of "an error so palpably wrong that to take advantage of it is imposing a penalty upon the defendant who clearly relied upon its accuracy", and that profits of 64%, when the plaintiff had represented that the maximum would be 10½%, were "gross, exorbitant and unreasonable".

Thus, obviously, the court held that the contract was voidable on the ground either of misrepresentation, or mistake, or over-reaching, or on a combination of them.*

If the decision in the *Burke & James, Inc.* case was based upon a holding that the bonus-for-savings provision of the contract was severable from the other provisions thereof for the payment of consideration to the contractor, and required proof of consideration other than the performance by the contractor of the obligations undertaken by him, it is unsound and unsupported by any authority.

If today, when again a state of emergency exists and future costs may be thought uncertain, one wishing to build a factory should agree with the contractor that, because of the disadvantages of a lump sum contract on the one hand and a straight cost plus contract on the other, the contractor should be paid his cost, a fixed fee, and one-half of the amount by which actual cost should be less than an estimated cost agreed upon by the parties, we believe that no one would contend that the three specified elements of compensation—cost, fixed fee and half-savings—do not constitute the consideration moving to the contractor for his performance of the contract; nor do we think that any one would contend that, because the contractor was under obligation,

*It should be noted that in the *Burke & James, Inc.* case the Government conceded the contractor's right to receive the fixed fee of $173 per camera, which was over 27% of cost.

whether by the terms of the contract or by operation of law, to avoid excessive costs in the performance of the contract, he ought not be entitled to the benefit of the half-savings clause, except upon a showing on completion of the contract that a higher cost would have occurred in the absence of that clause.

The Circuit Court of Appeals for the Sixth Circuit said in *Dayton Airplane Co.* v. *United States,* 21 F. (2d) 673, in which recovery under a bonus-for-savings clause was sustained as against the claim that it was void, because against public policy and because the resulting profits were unconscionable (p. 683):

> "Even if the subject were otherwise open, it would be difficult to set aside only one contract provision which formed a part of the consideration for the counter promises."

The Circuit Court of Appeals said in the present case (R. 2330):

> "We agree with the Circuit Court of Appeals for the Sixth Circuit, which in Dayton Airplane Co. v. United States, 21 F. (2d) 673, had a similar contract before it, that * * * the bonus for saving provision which formed part of the consideration for Bethlehem's agreement to build the ships may not, alone of all the provisions in the contract, be set aside as unenforceable and void."

The promise of Bethlehem was to build the ships. The consideration moving to Bethlehem was the promise of the Fleet Corporation to pay the price agreed upon. The Fleet Corporation's promise to pay under the half-savings clause was as much a part of the consideration for Bethlehem's promise to build the ships as was the Fleet Corporation's

promise to pay the cost and the fixed fee. The Circuit Court of Appeals so held. It said (R. 2329):

> "It must be concluded that the contracts were entire and that the bonus for savings formed part of the consideration for Bethlehem's obligation to build the ships."

It is not clear whether or not petitioners' contention is based on the fact that a government agency, the Fleet Corporation, was a party to the contracts. In any event there is no basis for any distinction in that regard between a contract made by the Fleet Corporation and one made by any other person. The contracts of the Government are subject to the same rules regarding their interpretation and enforcement as are the contracts of private individuals.

> *Lynch* v. *United States,* 292 U. S. 571, 579, and cases cited.

A fortiori that is true of the contracts of the Fleet Corporation.

> *Sloan Shipyards Corporation* v. *Fleet Corporation,* 258 U. S. 549;
>
> *United States* v. *Wood,* 290 Fed. 109, affirmed 263 U. S. 680;
>
> *Fleet Corporation* v. *Harwood,* 281 U. S. 519.

Failure of consideration cannot be found when the party asserting it gets the consideration which he has bargained for, much less when he gets also the accompanying benefits which he has hoped to obtain as a result of his promise —in this case the construction of the ships at less cost than

would have been possible under either fixed sum or straight cost-plus contracts, and at a lower cost than similar ships constructed by other contractors.

Petitioners' arguments about special efforts, increased efficiency, severability of the half-savings clause and failure of consideration are an elaborate tissue of words, without support in the findings, the evidence, or the decided cases.

IV

The contentions of the petitioners that the contracts were made under circumstances amounting to duress and that they were unconscionable, either because of the circumstances under which they were negotiated or for any other reason, are without support either in fact or in law.

(a) *There was no duress.*

The picture painted in the petitioners' brief, as a background for their contention that the contracts were made under circumstances amounting to duress, is that in the negotiation of the contracts the representatives of the Fleet Corporation were urging Bethlehem to undertake the construction of the ships which the Government had to have, and that Bethlehem held back, refusing to do the job except for its "pound of flesh", and taking advantage of the necessities of the Government to exact a price known to both parties to be inordinately high.

That the picture is plainly and demonstrably false will be seen from a brief review of the negotiations.

In August, 1917, the Fleet Corporation requisitioned all merchant ships of more than 2500 tons deadweight under construction in Bethlehem's yards and in other yards (R. 527). Thereafter Bethlehem entered into negotiations with the Navy Department, as a result of which a contract was made on December 6, 1917, for the construction of 85 destroyers (R. 579). It was in these negotiations that the idea of the half-savings clause was first put into practice (R. 627).

The war emergency required that the Fleet Corporation take up the entire balance of Bethlehem's capacity, for the building of tankers and cargo and troop ships. Accordingly, Bethlehem's representatives were summoned to Washington for a conference with representatives of the Fleet Corporation on December 12, 1917, and were on that date told to submit a proposal for the building of whatever additional tonnage their yards could build.

Bethlehem sent in its proposal within 24 hours, in its letter of December 13. It was in that letter that Powell referred to the impossibility of quoting fixed prices at any reasonable figure, and suggested the half-savings form of contract, upon the same terms as had been agreed upon with the Navy Department (R. 578-9).

At a further conference, the Fleet Corporation told Bethlehem what ships Bethlehem was expected to build, and at what yards, and asked for a specific proposal (R. 1352-3). Within 24 hours, to wit on December 20, 1917, Bethlehem submitted its proposal, setting forth its suggested basis for estimated cost (R. 582-7).

The Fleet Corporation's representatives expressed no opinions on the proposals, until January 3, 1918. In the meantime, on December 20, Powell met Messrs. McBride

and Day, who had just returned from a mission to the British Admiralty, and learned from them how much more serious the submarine warfare was than the public had been permitted to know (R. 1361-2). On the next day Powell went to see Piez, to record the fact that he did not propose that his company should be responsible for any delay in getting the enlarged construction program started; and at that meeting he made the offer, which he later confirmed by letter to the Fleet Corporation, to take the contracts on any basis that Piez might determine. That letter, which was dated January 3, 1918, stated (R. 588):

> "This will confirm the statement then made [*i.e.*, on December 21] that while this company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels."

Piez then arranged a conference between Powell and Bowles, and their assistants. It took place on January 3, 1918, and it resulted in an agreement on the terms of the first contracts.

The petitioners in their brief lay great stress on the fact that Powell "insisted" on the half-savings form of contract. It should be noted, however, that the only opportunity that he had to "insist" was during the five-hour conference on January 3, during which Bowles endeavored

to persuade Powell to take contracts on a lump sum basis, and Powell maintained that, under the conditions which existed, it was impossible to do so except at prices that would be too high for the Fleet Corporation to pay (F. 20, 25, R. 578, 588). The result was that at the end of five hours the parties had come to an agreement on the use of the half-savings form of contract, and upon the terms.

Thus the petitioners' statement of the facts (Br. 6) is misleading when it refers to "repeated but unsuccessful efforts by the Fleet Corporation" to enter into lump sum contracts; and it is contrary to fact when it says that "Bethlehem would not undertake construction under any other type of contract".

It is of course true that, Bethlehem being the largest shipbuilding company in the country, and being one of the two or three companies qualified to build the first-class ships that were included in the Fleet Corporation's program, its facilities were necessary to the carrying out of that program (F. 5, 19, R. 574, 577). It is also true that, although the Fleet Corporation had the power to take over Bethlehem's yards, what it really required for the carrying out of its program was the use of Bethlehem's organization —its knowledge of how to build ships (R. 539). It is not true, however, that the Fleet Corporation was faced with even the slightest threat that Bethlehem would withhold its facilities except at its own price. On the contrary, as shown above, Bethlehem had declared in writing to Piez, the responsible head of the Fleet Corporation, that it would construct the ships on any basis that he should determine. It must be presumed that Piez would not determine any price or terms that would not be at least fair to the Fleet Corporation.

The petitioners make light of this offer on the ground that Piez was not a shipbuilder himself, and that Bethlehem's offer was not (what apparently the petitioners think it should have been) "an agreement to submit to any arbitrary price which might be set" (Br. p. 65). It is said that the offer "contemplated only a genuine judgment based on his [Piez's] own study and judgment". Of course it did; but to suggest that the offer was, therefore, of no consequence is patently absurd.

We do not suggest that, at his conference on January 3 with Bowles,* Powell did not strenuously advocate the form of contract that he believed sound, and strenuously defend his judgment as to fair prices. Of course he did. But if by doing so he exercised duress, then every Government contract is voidable for duress, unless the contracting party happens to accept whatever terms the Government first proposes.

Throughout this case, including their brief in this Court, the petitioners have sought to stress a supposed lack of knowledge or information on the part of the representatives of the Fleet Corporation who took part in the negotiation of the terms of the contracts, concerning the cost of construction of ships. They have closed their eyes to the fact

*Powell had been Bowles' assistant as Superintendent of Construction of ships at the Brooklyn Navy Yard (R. 1330) and later, while Bowles was president of one shipbuilding company and Powell was connected with another, a serious business disagreement occurred which created unfriendly relations between the two men (R. 1371-2, 1414). Powell later supplanted Bowles as president of the Fore River Shipbuilding Company (R. 1372). The negotiations between Bowles and Powell, and particularly the tone of Bowles' letter of January 5, 1918, must be considered in the light of their previous relations.

that on August 3, 1917, the Fleet Corporation had requisitioned all merchant ships under construction in shipyards in the United States except very small ones (F. 8, R. 575) and had entered into arrangements of various kinds with the shipbuilders for the completion of such ships. Moreover, as the Master found, Admiral Bowles and Radford were equally as competent shipbuilding experts as were Bethlehem's representatives Powell and Brown (R. 527) and fully competent to check Bethlehem's estimates (F. 19, R. 686).* The contention of the petitioners is, and throughout this case has been, that Bethlehem had superior ability to determine the probable cost of the ships because it had records of the cost of construction of similar ships built at earlier dates, whereas Bowles and Radford were without such knowledge, and that the basis of Brown's estimates was not "revealed" to them.

The fact is that the representatives of the Fleet Corporation never asked how the estimates were made up or how the amounts thereof compared with the cost of similar ships previously constructed. In view of the testimony of both Piez and Radford that they knew at the time that it was impossible to make close estimates of cost, it is entirely clear that the representatives of the Fleet Corporation knew that Bethlehem's estimates were not such; and the Master found that they were not expected by the Fleet Corporation to be such (F. 14, R. 685). The fact is that Bowles and Radford knew as much as any one about the then going price of ships, the factors involved in the cost of a ship and the uncertainties concerning future costs; and, as the Master found, their expert experience in shipbuilding enabled them to make an "educated guess" as to what the

*See p. 8, *supra*.

probable cost of the ships would be, as readily as Bethlehem's representative could (R. 619).

Had Bowles and Radford considered that, in order to pass judgment on Brown's estimates, they needed to know how those estimates had been made up, it would have been a simple matter, between December 19, 1917, the date on which Powell submitted his proposals, and January 3, 1918, the date on which the agreement was reached, for them to request such information and to check the processes by which Brown arrived at his opinion as to probable cost.*

*In normal times the estimated cost of a ship is determined by the application of quoted prices to bills of material containing thousands of items, with the addition of estimation of the cost of labor, overhead, allowances for contingencies, etc. (R. 1030-31). Such estimates take weeks to prepare, as was testified to by Bethlehem's witnesses (R. 1031) and not denied by the Government's witnesses, and as must have been known to both Bowles and Radford. Time did not permit of the making of such estimates for the various types and sizes of ships which Bethlehem was called upon to build for the Fleet Corporation, as both parties well knew.

Moreover, the impracticability of making such estimates by reason of inability to get quotations for materials from manufacturers, as well as by reason of rapidly changing conditions and uncertainty as to future conditions, had led to the complete disbandment of Bethlehem's estimating department before these negotiations took place (R. 1028-30, F. 5, R. 681). Consequently, Brown adopted a very simple method described in the evidence (R. 840-863; see also Exhibits G-154 and G-155, R. 1852, 1854, offered, R. 920, 921), consisting of the application of ratios, representing realized or anticipated increases in factors affecting costs, to each of four major accounting subdivisions into which cost of similar ships theretofore constructed were segregated, plus a customary allowance for contingencies.

As stated above, the petitioners' witness Sanford, called by them as an expert to criticize Brown's estimates, testified that he would have pursued the same method (R. 1316), although he also testified that in some respects he would have used different factors in the development of his ratios.

In ruling on the petitioners' Request No. 136 (R. 623), to the effect that the Fleet Corporation at the time of the negotiations did not know the cost to Bethlehem of materials theretofore purchased for the ships included in certain of the contracts, the Master said:

> "Affirmed. If deemed important, the Fleet Corporation could have obtained this information before signing the contracts."

And in ruling on the petitioners' Request No. 139 (R. 624), to the effect that it was impracticable for the Fleet Corporation to make any analysis of the estimates submitted by Bethlehem, the Master said:

> "Denied. The Fleet Corporation could have analyzed these estimates and compared them with other cost estimates had the Fleet Corporation deemed such a course to be an aid to educated guessing."

Indeed, if Brown had been asked at the conference on January 3 how his estimates were made, they could have been checked in a very few minutes. There is no question but that Brown's method of preparing his estimates was a proper one; the petitioners' own expert witness testified that he would have used the same method (R. 1316), and stated merely that in a few respects he would have used different factors for application to certain elements of the cost of construction of prior ships.

Petitioners, as we have said, seek to minimize the significance of Powell's offer to accept the contracts on any terms that should be determined by Piez, and suggest that, because Piez had no knowledge of shipbuilding costs, he was therefore not in a position to suggest any terms for

the pending contracts. Piez, however, could have called for any of Bethlehem's records that he might have thought desirable to enable him to act pursuant to Powell's offer, as well as the details that had gone into the making of Brown's estimates, and he had not only Bowles and Radford, but Cox as well, to advise him as to the probable accuracy of Brown's figures.

The Master found (R. 531-2) that Powell made the offer to accept the contracts upon any terms that Piez might determine, as stated in his letter of January 3, 1918, and until the petitioners in their present brief have sought to minimize it, there has been no question but that it was a bona fide offer made by Powell with a view to bringing the negotiations to a conclusion and getting started on construction of the ships included in his proposal of December 19, 1917.

Powell's offer is a complete refutation of the factual situation presented in the petitioners' brief as the basis for the contention that the contracts were made under circumstances amounting to duress.

Moreover, even the circumstances outlined in the petitioners' brief do not furnish a basis for invalidating the contracts on the ground of duress. The cases cited by the petitioners do not bear out their contention. In none of the cases cited has a contract been invalidated either in law or in equity on the ground of duress, either legal, "moral" or economic, where the contract has been made between parties equally competent to contract and without any element of fraud, imposition or overreaching. The petitioners' contention is based on the assertion that the terms demanded by Bethlehem were knowingly harsh and excessive. But the Master found against this contention,

and held, as we have stated, that it was impossible at the time of the negotiations to make an accurate estimate of cost (F. 3, R. 681); that Bowles and Radford were as competent as Powell and Brown to estimate what future costs might be (R. 527, 538); that Brown's estimates were fairly and honestly made (F. 9, R. 683); and that the estimated base costs used in the contracts represented reasonable estimates of probable cost (F. 23, R. 688).

In affirming the petitioners' Request No. 140 (R. 624), to the effect that the Fleet Corporation was not in a position to determine the probable or approximate cost to Bethlehem of building the ships, the Master said:

> "Such cost was a guess for either Bethlehem or the Fleet Corporation."

And in affirming Request No. 165 (R. 634-5), to the effect that Bethlehem was not in a position to determine the probable approximate cost of troop ships under one of the contracts not here in controversy, the Master said:

> "Neither Bethlehem nor the Fleet Corporation were enabled to anticipate the future beyond the point of an educated guess."

In denying the petitioners' Request No. 106 (R. 614-5) to the effect that Powell and Brown were in a position to determine approximately what Bethlehem might reasonably expect to accomplish with respect to increasing efficiency of labor, the Master said:

> "Denied, because guessing against unascertainable future conditions is not the equivalent of 'reasonable expectation'."

Moreover, the Master found, concerning the six later contracts referred to in the petitioners' brief, that the representatives of the Fleet Corporation as a result of deliberate judgment fixed the "base cost" of the contracts at what was believed to be as fair and reasonable as could be estimated under all the then existing circumstances (R. 554). He also found that "The evidence also disclosed that the 'educated guess' of Powell and Brown as to the 'base cost' for the contracts of December 31, 1917, produced a still less cost to the Government of ships built under these contracts than under the lump sum or cost plus contracts with other shipbuilders" (R. 554). He also found:

> "The testimony in the record justifies the conclusion that with or without adjustment, to reflect the difference in specifications, the cost to the Government of the vessels built under the Bethlehem contracts was less, for value received, than the cost under contracts with other shipbuilders" (R. 568).

The Master's findings and rulings referred to above have been affirmed by both the courts below, and there is no evidence to the contrary. The assertion that the terms demanded by Bethlehem were known to be harsh and excessive, and that Bethlehem imposed such terms upon the Fleet Corporation by taking advantage of the urgency of its necessities is, therefore, without support in the record.*

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*That Bethlehem's representatives were convinced that the uncertainties of the times were such that they could not know what would be the outcome of the contracts that they proposed as to cost of construction and "savings" is shown by the fact that Powell declined to accept Bowles' offer to contract for the construction of certain ships at Union, covered by Contract No. 191 (R. 171), at $189 per ton, with wage protection (R. 979, 994-5, 1402-3), which would have

The cases cited in the petitioners' brief as supporting their contention that the contracts were tainted with duress are, with one exception, cases decided in admiralty with respect to salvage contracts. That courts of admiralty apply to such cases a rule not applicable to suits at law or in equity has been clearly pointed out by this Court. In *The Tornado,* 109 U. S. 110, one of the cases relied upon in the petitioners' brief, this Court said (p. 117), "Every agreement for salvage compensation is subject, as to amount, to the judgment of the court as to its being equitable and conformable to the merits of the case." In *The Elfrida,* 172 U. S. 186, also cited in the petitioners' brief, in upholding a salvage contract where there had been open bidding and there were no circumstances which had compelled the master of the libeled vessel to accept the offer of the libellants, this Court said (p. 197), "We do not say that to impugn a salvage contract such duress must be shown as would require a court of law to set aside an ordinary contract; but where no such circumstances exist as amount to a moral compulsion, the contract should not be held bad simply because the price agreed to be paid turned out to be much greater than the services were actually worth."

The contention in the petitioners' brief that the terms of the contracts in controversy were induced by duress is without support in the record either in fact or in law.

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resulted in a final price to the Fleet Corporation under a lump sum contract of $192 per ton, against $184 per ton (R. 996-7) to be paid by the Fleet Corporation under the form of contract and estimated costs now said by the petitioners to have been opposed to public policy. (See p. 73, *infra.*)

(b) *The contracts were not unconscionable.*

With respect to the alleged "unconscionability" of the contracts, the petitioners' whole argument is addressed to the amount of profit realized by Bethlehem thereunder. Nowhere do they assert that the contracts resulted in an excessive cost to the Fleet Corporation of any of the ships referred to. In none of the cases cited in the petitioners' brief has any contract been held to be unconscionable, unless the total amount to be paid under the contract was found to be unreasonable and either grossly exorbitant or totally inadequate, as the case might be, and the contract for that reason to be in the words of Lord Hardwicke in *Earl of Chesterfield* v. *Janssen*, 2 Ves. 125, 155,

> "such as no man in his senses and not under delusion would make on the one hand and as no honest or fair man would accept on the other."

Scott v. *United States*, 12 Wall. 443, from which petitioners quote at page 77 of their brief, is not in point. The services for the non-performance of which damages were sought in that case were held not to be within the contract. Petitioners' quotation from the opinion is nothing more than a restatement of the doctrine of *Earl of Chesterfield* v. *Janssen*, given as an additional reason why the plaintiffs' interpretation of the contract should not prevail.

Hume v. *United States*, 132 U. S. 406, is a leading case on unconscionable contracts, and well illustrates the class of contracts that will be held to be such. In that case the plaintiff contracted in writing to sell to the Government a quantity of shucks at 60 cents a pound at a time when the known or ascertainable market value of that commodity did

not exceed 1¾ cents per pound. As appears from the opinion, there was reason to believe that the bid was the result of a clerical error, and that the plaintiff intended to quote a price of 60 cents a hundredweight. The claimant, however, insisted that he did not so intend. After quoting Lord Hardwicke's classical definition of an unconscionable contract, this Court said (at p. 415):

> "The claimant by his replication insists that the price of sixty cents per pound for shucks 'was the price at which he intended to bid, and that there was no mistake on his part in making out the bid.' This is an admission, when taken with the findings of fact, that he designed to commit the agents of the Government to a contract 'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other,' and is fatal to his recovery according to the contract."

In *Beard* v. *United States*, 3 Ct. Cl. 122, also cited in the petitioners' brief, the contract was for work to be fully performed within about 40 days after its execution at prices from 300% to 900% in excess of the usual and customary prices then current for similar work at a time and place "when laborers were plentiful, wages low, and material abundant and cheap". The court held that the price was so exorbitant as to be evidence of either imposition or collusion, which had not been overcome by the evidence before it.

Bassick v. *Aetna Explosives Company*, 246 Fed. 974, was a case in which a broker, having a contract to sell materials at a given price, persuaded his principal to alter his commission so that he would receive the entire pro-

ceeds above the specified price, at the same time concealing the fact that he had already sold, or was about to sell, the principal's goods at a price greatly exceeding the price named in the amended contract.

The other cases cited in petitioners' brief are equally irrelevant.

It is clear, however, from all those cases that whether or not a contract is to be deemed unconscionable is to be determined by the circumstances existing at the time of its making. Whether "a man in his senses and not under delusion" would at that time have made such a contract is dependent upon facts then known or ascertainable.

It is equally clear, in the present case, that the Fleet Corporation was quite aware of what it was doing when it entered into the contracts and agreed to the base prices therein contained. Its representatives were shipbuilders of long experience; they were engaged in the negotiation of contracts with every shipyard in the country; they knew what were the going prices of ships, how much they were being required to pay under the lump sum contracts, and what they could expect under straight cost-plus contracts. Before the first contracts with Bethlehem were signed they made comparisons which indicated that the base prices agreed upon with Bethlehem were reasonable (R. 1507-9; F. 22, R. 688).

The petitioners make a great deal out of the words of Admiral Bowles, in his memorandum of January 5, 1918, to the effect that he considered the prices too high, but that they were the best that he could get; and a picture is painted of Bethlehem's representative standing out for exorbitant prices. But the fact is that Admiral Bowles was endeavoring to get a lump sum quotation; that Powell would not

make such a quotation, because of the uncertainties of the time; and that, as it has turned out, Powell was entirely right in his view of the kind of contract that would best serve the interests of the Government as the owner of the Fleet Corporation, and Bowles was wrong. This may be seen by a comparison of Bowles's idea of price for a particular group of four cargo ships and the price which actually became payable for the same ships under a half-savings contract.

The Fleet Corporation had on August 3, 1917, requisitioned three cargo ships on which Bethlehem had commenced construction at the Union yards. Prior to the negotiations involved in this case, the then head of the Union yards had proposed a price of $205 per ton for the ships when completed (R. 994). In Bowles's discussions with Powell he offered $180, plus adjustment for wage increases (R. 979, 994-5, 1402-3), for those three and a fourth similar ship, while Powell stood out for a half-savings contract, with a base price of approximately $180 a ton. Had Bethlehem accepted Bowles's offer, it would have received, with the wage adjustments, $192 per ton for these ships. Actually, the cost to the Government under the half-savings contract was only $184 per ton (R. 996-7)—a saving of $8 per ton on 4 ships of approximately 12,000 tons each, or a total saving of approximately $380,000.

Moreover, whatever Bowles's view may have been, it is clear that Bowles's superior, Piez, regarded the form of contract adopted as more advantageous to the Fleet Corporation than either a lump sum contract or a straight cost-plus contract. He so testified (R. 1498-1502; see also Exh. B-6, R. 1901, offered, R. 1503, 1530). Piez, while not a shipbuilder, was a business executive of ability and

experience, and in his own business had made use of similar forms (R. 1500).

In any event, the form of the contracts which petitioners attack was believed by the parties to be desirable from the standpoint of both of them, and the Master and the courts below have found that it was (F. 12, R. 684; R. 736, 2330). The base costs specified in the contracts represented reasonable estimates of probable cost (F. 23, R. 688) and corresponded with the intention of the parties (F. 14, R. 685), and the contracts resulted in the construction of ships at a cost to the Fleet Corporation less than the cost of comparable ships built for it under either lump-sum or cost-plus contracts (R. 554-568).

The petitioners' contention that the contracts so entered into were unconscionable is contrary to all the evidence in this case, and to the findings of the courts below.

V

Petitioners' arguments amount to a contention that all bonus-for-savings contracts are invalid, and beyond the power of the Government to make. The contention is without basis in law.

Petitioners contend that the half-savings provisions of the contracts are invalid, first because they actually resulted in profits which petitioners consider unreasonably large, second because at the time when the contracts were made they "permitted" such unreasonable profits, and third because the profits, though resulting from substantial reductions below estimated costs, were not commensurate with the risk, or lack of risk, taken by the contractor under such type of contract.

That contention strikes at the root of half-savings contracts, and amounts to a request to this Court to declare such contracts invalid, as a matter of law, and beyond the power of the Government to make. For the essence of the contention is that the half-savings clause was invalid, because there was a possibility that the actual cost *might* fall below the estimated cost by reason of the non-occurrence of events or conditions which everyone considered probable at the beginning of 1918.

There is an essential absurdity in the petitioners' contentions, in so far as they are based upon the fact that the estimated costs, upon which the savings were to be computed, contained allowances for conditions which were expected to exist during the contract period. In ordinary times, when a contractor can bid for his materials in a relatively stable market, when wages are stable and no great expansion of working force is required, there is no need for such devices as half-savings contracts. The contractor can estimate his costs, add a figure for profit and for such contingencies as he may anticipate, and make his commitment on a firm basis.

It is under conditions such as existed in 1918 that occasion arises for entering into contracts other than lump sum contracts. The Government cannot get firm price commitments, except at figures which provide against all reasonably anticipated contingencies; it is better for it to agree to pay cost plus a profit; and it can protect itself against the pitfalls of straight cost-plus contracts by providing, through such devices as "half-savings" provisions, a liberal incentive to the contractor to keep the cost down.

In any such contract, it is in the nature of things that there must be some provision for changes and contingencies

that seem likely to occur, whether they be probable increases in the price of materials, an anticipated decrease in the efficiency of labor, which is necessarily present with a great expansion of the labor force, or such contingencies as higher costs arising from transportation difficulties, increased freight rates, or other economic factors.

In every such case there is always a *possibility* that some or all of the contingencies which are provided for may not occur. That being so, the argument of the petitioners at pages 57-60 of their brief amounts to a contention that all such contracts are invalid.

In view of the success of this type of contract in the particular case, from the standpoint of what the ships actually cost the Fleet Corporation, this Court might well hesitate to announce a rule which would condemn all such contracts, even if it were otherwise impelled to do so. In times of national emergency, the executive and administrative branches of the Government require the utmost freedom to contract, and to devise means of getting production quickly and cheaply; they will not be helped by arbitrary restrictions on the type of contracts which they may make —particularly by restrictions which are based upon a single case, and upon a conception that the profits derived by a particular contractor were in excess of reasonable compensation for the services performed.

In *Dayton Airplane Co.* v. *United States*, 21 F. (2d) 673, 674, *supra*, the Circuit Court of Appeals for the Sixth Circuit said:

> "In this class of contracts [i.e., contracts of the War Department for supplies], and for effect on future emergencies, if for no other reason, a sound public policy must require that the government

keep its contracts and stand by its settlements as an individual must."

VI

The petitioners are asking this Court to exercise a function of Congress in respect of the regulation of profits.

The petitioners are asking this Court to make a judicial declaration that profits of approximately 22% on the cost of ships (half being fixed fees and half being the contractor's share of savings) are, as a matter of law, exorbitant and unconscionable; to override contracts made by a governmental agency because, though that agency made the contracts with its eyes open and got what it bargained for, the amounts which the contractor earned thereunder have turned out to be more than this Court should consider reasonable. They are, moreover, asking this Court to set up a standard of compensation, or profit, in terms purely of a percentage of cost, without relation to any other economic factors.

We submit that petitioners are asking this Court to appropriate to the judicial branch of the Government a function which is legislative and executive in its essential character. We do not suggest that courts are not frequently called upon in particular cases, and upon evidence, to make a determination of reasonable compensation. What we do say, however, is that, having introduced no evidence whatever to establish any standard of reasonableness, the petitioners are asking this Court to refer to certain published reports of administration practice and, with that as the sole basis, to crystalize into a rule of law what is essentially a conception of legislative and administrative policy.

Not only is there no evidence to support the proposition that 22% of cost is an unreasonable and inordinate rate of return; but there is substantial evidence in the record which casts doubt upon such a proposition.

For example, Exhibit B-11 (R. 1907, offered, R. 1571) shows that the profits of a typical company (United States Steel Corporation) during the World War years were 49.1% in 1916, 57.6% in 1917, and 48.86% in 1918, the computation being based in each case upon gross sales. Similarly, Exhibit B-10 (R. 1906, offered, R. 1570) shows that, for typical peace time years 1926 and 1927, the rate of return of the various groups of industries in the United States, based on the ratio of profit to cost, varied from 12.77% to 56.15% for 1926 and from 9.75% to 52.98% for 1927, the combined averages for the two years being, respectively, 21.04% and 20.21%.

The petitioners' brief makes reference to a part taken by Charles M. Schwab in the modification by agreement of lump sum contracts that had been entered into with American Shipbuilding Company to a basis of cost plus 10%. We have shown by Geiss' testimony (R. 1540-69), which has not been controverted, that while the modified contract with American Shipbuilding Company purported to allow only 10% over cost, in point of fact, by reason of differences in the definition of cost and extra allowances, it figured considerably more than 10% on actual cost as defined in the Bethlehem contracts, and have demonstrated by his calculation (Exh. B-12, R. 1932, offered, R. 1540) that upon the same basis of settlement Bethlehem's claim would amount to something in excess of $8,000,000.

Mr. Schwab testified that what might be a proper margin of profit for American Shipbuilding Company

would not be adequate for an old line shipyard such as Bethlehem's because of the difference in the plant investment and the character of the ships constructed (R. 1481). Obviously the Master had a like distinction in mind in refusing petitioners Request No. 230 to the effect that 10% of cost was regarded as affording just and reasonable compensation (R. 662-3; see also Report, R. 539-40; also R. 2329).

The assertion is made in the petitioners' brief (p. 57), without any support in the evidence, but, as there stated, "without fear of contradiction", that a fee of 20 or 25% would be recognized as inordinate in a cost-plus contract. On the contrary we assert that there is no principle of law that would prohibit the Government from agreeing to payment of 20% of cost or more to obtain the expert services of an experienced organization to which it might assign its more difficult and exacting types of contracts (see Exh. B-28, R. 1920 offered, R. 1380), if it should be convinced that it would thereby attain its objective at a lower cost to it than if it contracted with others for the same construction on the basis of cost plus 10%. Under the contracts in controversy the Fleet Corporation got the ships at less cost than it paid for comparable ships built for it by other shipbuilders under both lump sum and cost-plus contracts (R. 554, 568).

In their petition for certiorari, the petitioners referred to the present national emergency and said:

> "The Government is now engaged in a program of military and naval armament comparable to or greater than that undertaken in 1917 and 1918. It is therefore, of immediate national concern that there should be an authoritative determination of the

extent to which the country's needs should place the Government at the mercy of its contractors".

Applied to the argument with respect to the amount of Bethlehem's profits on the contracts here in issue, this is a request to the Court to hold that the profits provided for in the contracts were unreasonable, and to fix 10% (subject, as the petitioners' brief says (p. 57), to "varying a small percentage from this standard") as the maximum that may be provided for, or permitted, under a Government contract.

In asking the Court to lay down such a rule, the petitioners are not only asking this Court to set up a legislative standard; they are asking it to set up such a standard in defiance of the rejection of that standard by the Legislature, and the adoption by the Legislature of another method of controlling the amount of profits during the present national emergency.

Congress from time to time has exercised its power to limit the profits of Government contractors in a variety of ways. It has limited the price which the Government might pay for specific commodities or facilities.* It has set up in certain instances a standard of "reasonable profit

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*Maximum of 53 cents per lb. for powder (Act of February 14, 1917, 39 Stat. 909); maximum of $2.45 per sq. ft. for unlined buildings and $2.90 per sq. ft. for lined buildings (Deficiency Appropriation Act of March 6, 1920, 41 Stat. 503); not more than 25% more than the estimated cost of the manufacture of similar material by the Government (Act of February 14, 1917, 39 Stat. 909; Act of July 8, 1918, 40 Stat. 815; Act of May 21, 1920, 41 Stat. 607); not more than the cost of the manufacture of similar article or material in a Government arsenal (Army Appropriation Act of July 11, 1919, 40 Stat. 104).

above the actual cost of manufacture".* It has limited the amount of recovery for profits under cancelled contracts.** It has delegated to the President the power to limit the margin of profit on essential commodities.***

Congress has limited the profits on naval vessels and merchant ships, since the World War, and has recently abandoned those limitations, after making many changes in them, and in their method of operation, during a continual re-examination of the problem over a period of six years.

Under the Vinson Act (March 27, 1934, 48 Stat. 505), profit on any contract for a naval vessel or naval aircraft was limited to 10% of the total contract price (which might be more than 11% of the contractor's cost), and all excess amounts were to be recaptured by the Government. By the Act of June 25, 1936 (49 Stat. 1926), the basis for computation of such profits was changed so as to apply, not to individual contracts, but to all contracts completed within an income taxable year. The Merchant Marine Act of 1936 (49 Stat. 1998) applied the same restrictions to merchant ships, and the Act of April 3, 1939 (53 Stat. 560) extended them to military aircraft, but at the same time increased the permissible percentage, for all aircraft, to 12% of the contract price (which might be more than 14% of cost).

The Vinson Act provided for profits, but took no account of losses. The Act of June 25, 1936, permitted a net loss on contracts in any taxable year to be carried for-

*Naval Appropriation Acts of August 29, 1916, 39 Stat. 556, and March 4, 1917, 39 Stat. 1168.

**War Claims Act of March 2, 1919, 40 Stat. 1272.

***Lever Act (August 10, 1917, 40 Stat. 276).

ward in determining profits for the following taxable year. The Act of April 3, 1939, further liberalized this provision so as to permit aircraft manufacturers to carry forward net losses for four succeeding income taxable years.

In 1940, because of the trend of international events, numerous bills were introduced into both houses of Congress, amending the Vinson Act in various particulars, and on June 28, 1940, the profit limitation of that Act was reduced to 8% (Ch. 440, 54 Stat. 676).

Within a few months, however, the policy of Congress was completely changed. On July 11, 1940, the Administration proposed to suspend the Vinson Act entirely, and to substitute therefor an excess profits tax law, applying to all industry.*

Pending the enactment of the excess profits tax law, the Act of June 28, 1940, was amended so as to strike out all reference to aircraft construction, thus restoring the 12% limitation contained in the Vinson Act (Act of Sept. 9, 1940, Ch. 717, 54 Stat. 872). The Report which accompanied the bill (H. R. No. 2810) explained the purpose of the Act as follows:

> "Unquestionably, there is a unanimity of opinion that all bottlenecks should be removed from the procurement of the most essential items of defense material, and airplanes stand at the top of materials in that category. Profit limitations do not now apply, public works contracts excluded, to any type of procurement of a military character, save complete naval vessels and aircraft No restriction obtains as to guns, powder, mechanized weapons, or any other kind of munitions. It would seem, therefore, that a limitation running to aircraft and naval vessels alone

*The New York Times, July 11, 1940.

> is not entirely logical, particularly at this time, and certainly is illogical if it operates to impede the consummation of urgent defense programs. The proper procedure, the committee submits, is to subject profits upon all contracts in the defense program, deemed to be excessive, to a uniform rate of recapture, and it wishes to stress the fact that delay in the early settlement of this question and the question of amortization of plant expansions are daily hurting the advance of defense preparation."

Finally, when Congress passed the excess profits tax law, it suspended the profits limitations of the Vinson Act and of the Act of June 28, 1940, during the period for which the excess profits tax should be in effect, and it also suspended the similar profit limitation in the Merchant Marine Act of 1936 (Act of Oct. 8, 1940; Ch. 757, 54 Stat. 974).

Thus the petitioners are asking this Court to re-enact, by judicial decree, a method of limiting contractors' profits which Congress tried out and has now abandoned.

Conclusion

The parties to the contracts in controversy considered the contracts to be more favorable to the petitioners than either lump sum or cost-plus contracts would have been. They proved to be so; since the cost to the petitioners of the ships constructed under them was, as the Master found, less than the cost of comparable ships constructed under either lump sum or cost-plus contracts in other yards. It was because Bethlehem did well the job that it undertook that that result was accomplished. In the light of the result it ill behooves the petitioners, after getting all that was con-

tracted for, to attempt to avoid payment on the pretext that Bethlehem was required, in order to recover on the contracts, to show by just what means that result had been accomplished. Without support in the record, the petitioners say that the result was not accomplished by increased efficiency. They seek to have the Court ignore the obvious consequence of their contention, namely, that, had Bethlehem been able to exercise still greater efficiency and further reduce the cost of construction, its earnings from the savings would have been greater and the petitioners' protest presumably the stronger, notwithstanding that they would have benefited to the extent of one-half of the saving.

The judgments of the court below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

Nos. 8 and 9.—October Term, 1941.

United States of America, Petitioner, vs. Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
United States Shipping Board Merchant Fleet Corporation, Petitioner, vs. Bethlehem Shipbuilding Corporation, Ltd.	

[February 16, 1942.]

Mr. Justice Black delivered the opinion of the Court.

These two cases arise from a dispute between Bethlehem Shipbuilding Corporation, Ltd., and the government about the amount of profits claimed by Bethlehem under thirteen war time contracts for building ships. The contracts were negotiated and executed in 1917 and 1918, when Germany's destructive warfare against our ocean shipping essential to the successful prosecution of the war made it necessary for the United States to build the greatest possible number of ships in the shortest possible time. They are typical products of a system of procurement heavily relied upon by the United States Shipping Board Emergency Fleet Corporation and other government purchasing agencies at the time.

On June 15, 1917, Congress gave to the President sweeping war powers, 40 Stat. 182, including (1) the power to commandeer shipbuilding plants and facilities, (2) the power to purchase ships at what he deemed a reasonable price with a provision for subsequent revision by the courts in the event the seller regarded the price set as unfair, and (3) the power to purchase or contract for the building of ships at prices to be established by negotiation. Acting under authority delegated to it by the President with Congressional approval, the Fleet Corporation declined to

seek utilization of the first and second methods but chose, under the third alternative, to make purchases through ordinary business bargaining.

The "actual cost" to Bethlehem of building the ships over which this dispute arises was about $109,000,000. The generously inclusive formula[1] for determining "actual cost," not challenged by the government here, was not peculiar to these contracts. It was based on the standard formula used by the Fleet Corporation in its contracts with other shipbuilders. And, as in practically all contracts of this type, there was no risk of loss.[2] The total profits claimed under the contracts by Bethlehem, and allowed by both courts below, were about $24,000,000,[3] or a little more than 22% of the computed

[1] Included in the detailed and comprehensive itemization of "actual cost" were the following and "items similar thereto in principle":

"The net costs . . . of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies . . . and other direct charges, such as insurance on the vessels, etc.

"A proper proportion of running expenses, including ordinary rentals, . . . repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges . . . .

"A proper proportion of interest accrued . . . on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

"A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

"A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties and not compensated for by insurance or otherwise.

"A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract."

Neither in the contracts nor under any relevant statutory provision was there any restriction on salaries and bonuses to be paid to executives of the shipbuilder or its affiliates. Cf. Sections 505(c) and 804(c) of the Merchant Marine Act of 1936, 49 Stat. 1985, 1999, 2013.

[2] Even in the case of lump sum contracts with the government, it is generally recognized that the real risk of loss is negligible. It is usual in this kind of contract to set prices high enough to cover, or otherwise specifically to provide against, unforeseen contingencies. And where loss does occur contrary to the expectation of both parties, Congress often passes special bills making the contractors whole.

[3] These ships apparently cost the government at least a large part of still another $4,825,415. The government paid this amount to Bethlehem to aid in expansion of plant facilities to build the ships—facilities which were turned over to Bethlehem after the war. The government's money was contributed under a contract commonly in use whereby the contractor was given the option of purchasing the additional facilities at a depreciated value. Whether the government, upon conveyance of the property, received any compensation at all does not clearly appear.

cost.[4] This figure of $24,000,000 does not include such profits as may have been made by Bethlehem Steel Company, Bethlehem's parent, which sold it at the maximum prices established by the War Industries Board, 43,000 tons of steel used in these ships.[5] The percentage of profits in relation to the actual investment and working capital devoted by Bethlehem to the building of the ships was not found by either of the courts below.[6]

In No. 8, the government filed a bill in equity against Bethlehem and others. The bill alleged that the government had been induced to enter into the contracts by fraudulent representations of Bethlehem's agents; and as an independent ground for relief, that it had been the duty of Bethlehem to perform the contracts fairly, honestly, and economically "in the shortest practicable time" for no more than "a fair and reasonable profit" and that any provisions in the contract for payment of more are "void and unenforceable." The prayer was for an accounting and a decree requiring Bethlehem to refund all amounts previously paid to it by the government in excess of what the court should find to be just and reasonable compensation for building the ships. Bethlehem filed an answer and a counterclaim for damages based on alleged breach of contract by the Fleet Corporation.

In No. 9, Bethlehem brought suit at law against the Fleet Corporation claiming damages for breach of the same contracts. In an affidavit of defense and counterclaim the Fleet Corporation repeated the allegations made by the government in No. 8 and sought the same relief.

The two actions were jointly referred by the District Judge to a Master who held hearings and made findings. In No. 8, the Master

[4] While profits on individual contracts ranged above and below 22%, both in the proceedings below and in this Court the whole series of contracts was regarded as a unit. The government has made no separate argument with respect to the individual contracts in which more than the average profit was realized, nor has Bethlehem with respect to the contracts in which the amount due under the half-savings clause proved to be small. The only finding of the Master in which any separation of contracts is made shows that the profits realized on contracts in which the estimated costs were checked by the Fleet Corporation were higher than those on contracts in which the Fleet Corporation accepted Bethlehem's estimates without check.

[5] Compare the statutory method of restricting profits of affiliates embodied in Section 803 of the Merchant Marine Act of 1936, 49 Stat. 1985, 2012.

[6] The contracts contained a provision, usual in Fleet Corporation contracts, under which the government agreed "to provide the cash funds necessary to pay for work already done and materials already furnished and for carrying on the work under this contract."

recommended that the government's bill be dismissed, and on the authority of *Nassau Smelting Works* v. *United States*, 266 U. S. 101, further recommended that Bethlehem's counterclaim be dismissed for want of jurisdiction, the amount claimed being in excess of $10,000. In No. 9, he recommended that judgment be entered for Bethlehem for $5,272,075[7] with interest at 2% from September 1, 1922. The District Judge declined to allow any interest, applying the law of Pennsylvania as he thought our decision in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, required. In all other respects he followed the Master's recommendations and rendered judgment accordingly. 23 F. Supp. 676; 26 *id.* 259. The Circuit Court of Appeals affirmed. 113 F. 2d 301. On application of the United States and the Fleet Corporation, we granted certiorari. 311 U. S. 632.

As the case reaches us, the controversy revolves primarily around the section of the contracts which sets out what is to be paid to Bethlehem. In all the contracts, that section contains substantially the following provisions:

"The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract . . . shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated base cost to the Contractor . . . . . Should the actual cost be less than the estimated . . . . cost. . . . the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit . . . one-half the amount by which such actual cost of each vessel falls short of the estimated cost . . . ."

Thus, a high estimated cost would increase the probability of "savings" to be divided between Bethlehem and the government. And the more the estimated cost exceeded actual cost, the greater would be Bethlehem's share. It can be seen, therefore, that the estimated cost agreed upon by the parties is a pivotal figure.

I.

The government charged Bethlehem with fraud in submitting estimated cost figures which were adopted in the contracts. It was alleged that Bethlehem's agents made two false representations: (1) that it was impracticable to estimate closely what the cost would be and (2) that the estimates Bethlehem submitted, and which the Fleet

[7] The government concedes "that $1,514,995 of the judgment awarded . . . in the action at law is . . . due under contracts other than those now under attack."

Corporation accepted, were fair and reasonable under the circumstances. The Master found that there was no evidence to support this charge of fraud. The District Judge approved this finding as did the Circuit Court of Appeals which said that it had "carefully considered the record in the light of this contention [of fraud]" and concluded that "the estimates submitted by Bethlehem and prepared for it by its representative Brown were fairly and honestly made and as accurate as could be expected under the uncertain conditions then prevailing." And in this Court the petitioner accepts these findings. Therefore, in considering other attacks upon Bethlehem's right to recover, we must do so on the assumption that there was no fraud in Bethlehem's negotiations with the government.

II.

The government contends that even in the absence of fraud, Bethlehem is entitled to nothing by virtue of the half-savings clauses.

One argument is that the contracts gave Bethlehem the benefits of participating in the savings only if Bethlehem by special efforts increased its efficiency and brought actual costs below the estimates agreed to in the contracts.

Neither the specific language of the half-savings provision nor its context supports this contention. On its face, the provision contains an unconditional promise to pay Bethlehem one-half of the difference between the actual and estimated cost of the ships in question. That such a method of computation would tend to discourage careless expenditures and encourage vigorous attempts at realizing economies in building the ships is hardly debatable. But the half-savings clause does not impose any positive obligations upon the builder. The Master found, upon consideration both of the terms of the contracts and testimony on the understanding of the parties, that a showing of savings, without more, obligated the government to share them with Bethlehem. It cannot be maintained that this finding, accepted by both courts below, is without ample support.

Nothing in the negotiations between the parties as revealed in the record indicates that they had a contrary understanding of the contracts. Bethlehem held out against the Fleet Corporation's early insistence upon lump sum contracts. It continually asserted that uncertainties about final cost due to rapidly rising prices would require it to protect itself by insisting upon a figure too high for the Fleet

Corporation's acceptance and therefore itself proposed the cost-plus-fixed-fee-plus-half-savings method of determining compensation. While there seems to have been recognition that this method might induce greater efforts at efficiency which would be to the advantage of both parties, there is not the smallest hint that either Bethlehem or the government regarded the substitution of this method as imposing any positive obligations upon Bethlehem in addition to those it would have had under lump sum contracts.

In the alternative, the government urges that the half-savings clauses are severable, and that if the contracts imposed upon Bethlehem no obligation of special effort to effect savings, these clauses were unsupported by consideration, and are therefore unenforceable. The Master and the courts below, however, treated these clauses as non-severable; to do otherwise would call for departure from accepted principles of the law of contract. Whether a number of promises constitute one contract or more than one is to be determined by inquiring "whether the parties assented to all the promises as a single whole, so that there would have been no bargain whatever, if any promise or set of promises were struck out." Williston on Contracts (rev. ed.) § 863 and cases there cited. The record makes it clear that each of the contracts here was assented to as a single whole, and that consummation of a bargain between the parties depended upon inclusion of the half-savings clause. Furthermore, we know of no federal or state statute or established rule of law in any jurisdiction inconsistent with the elementary proposition that a promise to build ships is good consideration for a promise to pay a sum of money whether fixed in amount or depending upon the relationship between actual and estimated cost.[8] Cf. *Dayton Airplane Co.* v. *United States*, 21 F. 2d 673, 682-683.

III.

The government further argues that if the half-savings clauses must be taken as permitting Bethlehem to participate in savings however caused, the contracts are invalid because unconscionable. Without specifying that it relies on the law of any particular jurisdiction, the petitioner rests its argument on an asserted general

[8] Of the cases called to our attention by the government, only in Burke & James, Inc. v. United States, 63 Ct. Cl. 36, was a bonus for savings clause held severable and invalid although regarded as "part and parcel of the original . . . contract." We agree, as did both courts below, with the Master's statement that the Burke case is not applicable here because "the facts upon which the decision of that case was based are so different."

doctrine of unconscionability at common law. Since there is no governing constitutional or federal statutory provision, if these were contracts between private individuals, the law of some locality would be controlling. *Erie R. Co.* v. *Tompkins, supra.* Whether the same rule would apply to government contracts in general or to the contracts of the Fleet Corporation[9] in particular, we need not decide. Nor assuming the applicability of the *Tompkins* case to the contracts before us, would we have to determine whether the law of the District of Columbia or of some particular state is decisive. For in invoking the asserted doctrine of unconscionability claimed to be applicable here, the government relies entirely upon the alleged existence of two elements: duress and profits grossly in excess of customary standards. And for reasons we shall set out, neither of these two elements exists here.

Duress. The word duress implies feebleness on one side, overpowering strength on the other. Here it is suggested that feebleness is on the side of the government of the United States, overpowering strength on the side of a single private corporation. Although there are many cases in which an individual has claimed to be a victim of duress in dealings with government, *e. g., Union Pac. R. R. Co.* v. *Pub. Service Comm.*, 248 U. S. 67, this, so far as we know, is the first instance in which government has claimed to be a victim of duress in dealings with an individual.

The argument by which the petitioner seeks to establish that the contracts were made under duress is essentially this: Germany's submarine warfare made it imperative that the government secure the greatest possible number of ships in the shortest possible time; there was a scarcity of ships and shipbuilding facilities in the United States; Bethlehem, the largest shipbuilder in the world, not only had shipbuilding facilities available, but also a trained organization; at a time when Bethlehem's facilities and trained organization were vital to the prosecution of the war, it declined to accept terms proposed by the government but insisted upon prices which some of the government's representatives thought too high; although Congress had authorized the Executive to commandeer

[9] The District Court treated the contracts as governed by the law of Pennsylvania. The Circuit Court of Appeals treated them as governed by the law either of Pennsylvania or the District of Columbia, but did not decide which. The Fleet Corporation was organized under the laws of the District of Columbia. Although wholly owned and controlled by the government it has been held subject to suit either in state or federal courts. Sloan Shipyards v. U. S. Fleet Corp., 258 U. S. 549; Merchant Fleet Corp. v. Harwood, 281 U. S. 519.

shipbuilding facilities if necessary, Bethlehem's organization was also needed and the government was without power to compel performance by an unwilling organization; the government therefore had to accept contracts on whatever terms Bethlehem proposed or, doing without the ships which Bethlehem could produce, run the risk of military defeat.

Two basic propositions underlie this argument: (1) The government's representatives involuntarily accepted Bethlehem's terms. (2) The circumstances permitted the government no other alternative.

Upon reviewing the negotiations between the representatives of the government and the representatives of Bethlehem, we cannot find support for the first proposition. The Master found, and the courts below agreed, that "the contracts resulted from negotiations in which both parties were represented by intelligent, well informed and experienced officers whose sole object was to make the best trade possible, under conditions which included the uncertainties of war time contingencies, the results from which were not and could not have been known at the time the contracts were made." Two of the three principal negotiators for the Fleet Corporation have testified in the proceedings before the Master. It is abundantly clear from their testimony that, during the course of the negotiations, they did not consider themselves compelled to accept whatever terms the other side proposed. In the disposition of the two main differences between the negotiators there is no evidence of that state of overcome will which is the major premise of the petitioner's argument of duress. Cf. *French* v. *Shoemaker*, 14 Wall. 314, 332.

One of the differences was settled by the government's abandonment of its earlier insistence upon a lump sum arrangement together with a guaranteed date of delivery. In view of the rising prices and unpredictable labor supply of the time, Bethlehem's reluctance to enter into contracts on such terms does not seem unreasonable.[10] And if the government's abandonment of its position is to be regarded as evidence of compulsion, we should have to find compulsion in every contract in which one of the parties makes a concession to a demand, however reasonable, of the other side.

[10] Cf.: "Obviously no sane man would bid on a lump-sum contract under such conditions, unless perchance he should treat the matter as a pure gamble and include an excessive margin in his proposal for unforeseen contingencies." Report of Chief of Construction Division, War Department Annual Reports (1919) 4147.

The other major difference between the negotiators was on the matter of price. There is evidence that some of the Fleet Corporation's representatives considered Bethlehem's demands high, but we cannot conclude that the figure finally accepted by the Fleet Corporation was accepted because its representatives felt themselves powerless to refuse. On the contrary, Bethlehem by letter voluntarily offered to accept contracts on terms to be fixed by the Fleet Corporation's general manager. This offer was rejected, one of the Fleet Corporation's negotiators testifying that it preferred to make contracts rather than assume the attitude of dictating terms. Moreover, the general manager of the Fleet Corporation, in whom final authority was vested and who approved these contracts, was of the opinion that high estimated cost figures would be advantageous to the government because "care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down." And one of the negotiators for the Fleet Corporation has given testimony that he was not so much concerned with cost as with speed of production since "legislation was already in the offing in the form of war profit taxes . . . to take care of extreme cases." We must therefore conclude that the negotiations do not show that Bethlehem forced the government's representatives to accept contracts against their will.

If the negotiations do not establish duress, the government finds it in the circumstances themselves. The petitioner concedes that the government could have commandeered Bethlehem's plants, but it contends that if the plants had been commandeered, Bethlehem's organization would have been unwilling to serve the government in them. Heavy reliance is placed on an observation in the Master's report that "the Government did not have power to compel performance by an unwilling organization." We shall later consider the alleged lack of power. We now point out that the alleged unwillingness is an assumption unsupported by findings or evidence. Since the possibility of commandeering appears not even to have been suggested to Bethlehem, we have no basis for knowing what its reaction would have been. We cannot assume that if the negotiations failed to produce contracts acceptable to both sides, Bethlehem would have refused to contribute to the war effort except under legal compulsion. We cannot lightly impute to Bethlehem's whole organization, composed as it was of hundreds of

people, such an attitude of unpatriotic recalcitrance in the face of national peril.

But even if we were to assume, as we do not, an initial attitude of unwillingness, we do not think that the government was entirely without means of overcoming it. For the representatives of the Fleet Corporation, an agent of the United States, came to Bethlehem armed with bargaining powers to which those of no ordinary private corporation can be compared. If it chose to, the Fleet Corporation could have foregone all negotiation over price, compelling Bethlehem to undertake the work at a price set by the President with the burden of going to court if it considered the compensation unreasonably low. And the power to commandeer Bethlehem's entire plant and facilities, in accordance with authority specifically delegated by the President, provided the Fleet Corporation with an alternative bargaining weapon difficult for any company to resist.

The government nevertheless urges that the circumstances here are analogous to those under which courts of admiralty have held contracts to be unenforceable. In particular, it points to the principle that courts of admiralty "will not tolerate the doctrine that a salvor can take advantage of a situation, and avail himself of the calamities of others to drive a bargain; nor will they permit the performance of a public duty to be turned into a traffic of profit." *Post* v. *Jones*, 19 How. 150, 160. We think this principle has no real relevance to the case before us.

In the first place, if there was a "traffic of profit" here, it was not the unanticipated result of an accident as in the salvage cases. When Congress authorized the procurement of ships through ordinary commercial negotiations, it must have known that the purchases could not be made in a market of open competition because existing shipbuilding facilities would be overtaxed by the construction program. See Department of Commerce, Government Aid to Merchant Shipping (rev. ed. 1923) 433; Hearings before House Committee on the Merchant Marine and Fisheries on H. R. 10500, 64th Cong., 1st Sess., *passim*. And Congress must have anticipated that in the contracts agreed upon profits would be expected and that the self interest inherent in commercial transactions would make itself felt. Therefore, in seeking to establish duress from the circumstances in which these contracts were made, the government is relying on the identical circumstances which were in existence at the time Congress chose the policy of authorizing procurement of ships through commercial negotiation. We cannot now invalidate

contracts made pursuant to a congressionally selected policy on the sole ground of the coercive effect of circumstances which Congress clearly contemplated. To do so we should have to repudiate legislative power exercised in proper constitutional sphere.

In the second place, the captain of a ship in distress on the high seas who is completely at the mercy of his salvor cannot be likened to a sovereign power dealing with an individual contractor. We cannot regard the government of the United States at war as so powerless that it must seek the organization of a private corporation as a helpless suppliant. The Constitution grants to Congress power "to raise and support Armies", "to provide and maintain a Navy", and to make all laws necessary and proper to carry these powers into execution. Under this authority Congress can draft men for battle service. *Selective Draft Law Cases*, 245 U. S. 366. Its power to draft business organizations to support the fighting men who risk their lives can be no less.

Profits. The general common law rule of unconscionability on which the petitioner relies is said to deny enforcement to contracts when the profits provided for are grossly in excess of a standard established by common practice. Whether there is such a rule, what is its scope, and whether it is part of the body of law governing these contracts, we need not decide. For high as Bethlehem's 22% profit seems to us, we are compelled to admit that so far as the record or any other source of which we can take notice discloses, it is not grossly in excess of the standard established by common practice in the field in which Congress authorized the making of these contracts. And in particular, it may be added, the Master found that the ships built by Bethlehem cost the government less than comparable ships built by other shipbuilders. The government made no attempt to establish, nor is there any indication in the record, that the profits realized by other shipbuilders were any less than Bethlehem's.

To establish a standard of customary profits, the petitioner points to the experience of the Navy and War Departments and other branches of the government in connection with straight cost plus contracts. Because 10% was the profit specified in many such contracts, the government asserts that it is an appropriate figure here, and urges that the profits on these contracts, tested by such a standard cannot be allowed. The relevance of experience with cost plus contracts to the contracts here is not clear. The Shipping

Board deliberately chose to avoid cost plus contracts where possible, having found them unsatisfactory in practice. Moreover, the record shows that the total cost to the government of comparable ships under cost plus contracts was higher than the total cost of the ships Bethlehem built under the contracts here in question. And experience in many fields has demonstrated that the percentage of profit actually realized under cost plus contracts is likely to be far more than the percentage specified. As stated in 1918 by Charles E. Hughes, later Chief Justice, in his report to the Attorney General on the aircraft industry, "contracts of this sort lead to waste, foster abuses, and impose an almost intolerable burden of cost accounting, in itself a hindrance to rapid production." Report to the Attorney General on the Aircraft Inquiry (1918) 134. See also, Expenditures in the War Department—Camps, House Report No. 816, 66th Cong., 2d Sess., 49-53. The 10% which the petitioner derives by reference to the cost plus contracts of certain governmental department cannot be taken as a standard of common practice. It is an illusory figure without basis in the realities of business experience.

If profits earned under government contracts in general are taken as the standard of comparison the 22% claimed here is overshadowed in too many instances for it to be regarded as extraordinary. The Hughes report referred to above, for example, points out (pp. 136-146) that most of the airplane production during the last war was under contracts providing for much higher profits. To take an example of the profits made on food products, the Federal Trade Commission determined that in 1917, profits on the sales of salmon canneries, a major portion of whose output was purchased by the government, ranged from 15 to 68% of cost, averaging 52%.[11] Federal Trade Commission, Report on Canned Salmon (1918) 63. In the shipbuilding industry itself, even in peace times, profits were found by a special committee of the Senate which investigated the munitions industry to have been from 25% to 37% on the cruisers built in 1927, about 22% in 1929, and of like range for other years. Senate Report No. 944, 74th Cong., 1st Sess., 4.

If the comparison is made with industrial profits, not limited to profits on government contracts alone, the 22% asked for here

[11] The Federal Trade Commission Report does not give separate figures on sales to the government, but points out (p. 7) that the government had announced its intention to purchase 80% of the 1918 pack.

likewise loses all claim to distinction. An exhibit, the accuracy of which the government has not challenged, incorporated into the record of this case, indicates that in terms of profit on gross sales, the largest American steel company made 49, 58 and 46% during the years 1916, 1917, and 1918. As computed by the Federal Trade Commission, net earnings in 1917 of the same company on all its business were 25% of total investment, and the Commission cites instances of other steel companies whose earnings thus measured ranged from 30 to 320%. Federal Trade Commission, Letter on Profiteering (1918) 9. Profits of lumber producers, again in terms of return on investment, ranged as high as 121%; and of producers of petroleum products, as high as 122%, over half of the industry earning more than 20%. *Id.* 12, 13. During the first six months of 1917, one of the two major sulphur producers in the country sold its product at an average price of $18.11 per ton, more than 200% above cost which was $5.73 per ton; the other major producer earned 236% on its investment during the first eleven months of the same year. *Id.* 11. The Federal Trade Commission's collection of data for various other industries, a collection which the Commission stated was "by no means a complete catalog", affords many additional examples of the same kind. But further confirmation should be unnecessary for a conclusion no businessman would question: that the profits claimed here, seen in their commercial environment, cannot be considered exceptional.

The profits claimed here arise under contracts deliberately let by the Fleet Corporation under authority delegated by the President in accordance with an act of Congress. Neither Congress nor the President restricted the freedom of the Fleet Corporation to grant measures of profits common at the time. And the Fleet Corporation's chosen policy was to operate in a field where profits for services are demanded and expected. The futility of subjecting this choice of policy to judicial review is demonstrated by this case, coming to this Court as it does more than twenty years after the ships were completed. In any event, we believe the question of whether or not this policy was wise is outside our province to decide. Under our form of government we do not have the power to nullify it, as we believe we should necessarily be doing, were we to declare these contracts unenforceable on the ground that profits granted under Congressional authority were too high. The profits

made in these and other contracts entered into under the same system may justly arouse indignation. But indignation based on the notions of morality of this or any other court cannot be judicially transmuted into a principle of law of greater force than the expressed will of Congress.[12]

IV.

The problem of war profits is not new. In this country, every war we have engaged in has provided opportunities for profiteering and they have been too often scandalously seized. See Hearings before the House Committee on Military Affairs on H. R. 3 and H. R. 5293, 74th Cong., 1st Sess., 590-598. To meet this recurrent evil, Congress has at times taken various measures. It has authorized price fixing. It has placed a fixed limit on profits, or has recaptured high profits through taxation. It has expressly reserved for the government the right to cancel contracts after they have been made. Pursuant to Congressional authority, the government has requisitioned existing production facilities or itself built and operated new ones to provide needed war materials. It may be that one or some or all of these measures should be utilized more comprehensively, or that still other measures must be devised. But if the Executive is in need of additional laws by which to protect the nation against war profiteering, the Constitution has given to Congress, not to this Court, the power to make them.

Affirmed.

The CHIEF JUSTICE and Mr. Justice JACKSON, who as former Attorneys General actively participated in the prosecution of these cases, take no part in this decision. Mr. Justice ROBERTS also takes no part in the decision.

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12 Cf.: "It would be very dangerous, indeed, to the best interests of the government . . . if . . . this [Court] should . . . render decrees on the crude notions of the judges of what is or what would be morally right between the government and the individual." Smoot's Case, 15 Wall. 36, 45-46.

Mr. Justice MURPHY, concurring.

I concur in the opinion of the Court insofar as it relates to duress and coercion and the non-severability of the "bonus for savings" clauses, but desire to add a brief further statement of my views.

In voting for affirmance of the judgment, I do not wish to be understood as expressing approval of an arrangement like the one now under review, by which a company engaged in doing work for the Government in time of grave national peril—or any other time—is entitled to a profit of 22 per cent. under contracts involving little or no risk and grossing many millions of dollars. Such an arrangement not only is incompatible with sound principles of public management, but is injurious to public confidence and public morale. The fact that such cases were common during the last war, as evidenced by the circumstances recited in the opinion of the Court, provides no justification to my mind for such a practice then or now. No man or set of men should want to make excessive profits out of the travail of the nation at war, and government officials entrusted with contracting authority, and the Congress bestowing such authority, should be alert to prevent it.

The question before the Court for decision, however, is not whether an arrangement like the one presented for review accords with our conceptions of business morality or with correct administration of the public business. Having made a bargain, the Government should be held to it unless there are valid and appropriate reasons known to the law for relieving it from its obligations. It is the duty and responsibility of the courts, not to re-write contracts according to their own views of what is practical and fair, but to enforce them in accordance with the evidence and recognized principles of law.

In my opinion the elements of duress and coercion have not been established in this case. The doctrine that "necessitous men are not free men", a doctrine evolved by the English courts of chancery in the eighteenth century for the protection of harassed debtors,[1] is not applicable to the Government of the United States, armed as it is with both an actual and a potential arsenal of powers adequate to protect its interests in dealings with private persons.

I am also of opinion that the "bonus for savings" clauses are

[1] Vernon v. Bethell, 2 Eden 110, 113. And see Wood v. Abrey, 3 Maddock's Chan. 216; Underhill v. Horwood, 10 Ves. 209.

integral parts of the contracts in question and part of the entire consideration moving to Bethlehem in exchange for its promise to build ships. To characterize these clauses as severable and supported by consideration only if Bethlehem promised to increase its efficiency is ingenious, but requires us to close our eyes to the actualities of the record before us and to ignore fundamental contract law.

Nor can I accept the proposition that the "bonus for savings" clauses are properly interpreted as meaning that Bethlehem was to receive one-half of the "savings" only insofar as Bethlehem could prove that the "savings" were due to its increased efficiency. Such an interpretation, it is true, would prevent Bethlehem from benefitting by reason of purely fortuitous "savings". However, in the absence, as here, of fraud, mistake, or that overreaching which we label "duress" and "coercion", contracts should be interpreted as they are written, not as they might or should have been written in the light of after-thought and subsequent experience. The language of the "savings" clauses does not limit Bethlehem's participation in "savings" to those attributable only to its own efforts. The Master found that "Bethlehem was to participate in savings however earned". The suggested interpretation, ignoring the language of the contracts and the expressed understanding of the parties, gratuitously rewrites the contracts to accord with notions of fairness acquired in the light of subsequent developments.

It is understandable that one may be indignant at Bethlehem's claim, but such indignation does not justify the distortion of estabtablished legal principles to relieve the Government of its approval of a hard bargain. It cannot be left out of consideration that the Government entered into the agreements with full understanding of their terms. Surely there is much to be said in favor of the Government's standing behind obligations, even though quite onerous, which it incurred with knowledge of the circumstances. The possibility that the Government may be relieved of bargains twenty-four years after agreeing to them is not conducive to mutual trust and confidence between citizens and their government.

The judgment should be affirmed.

Mr. Justice FRANKFURTER, dissenting.

The Founders divided our government into three branches, partly to prevent autocratic concentration of power and partly to achieve appropriate division of labor in the difficult task of government. The President has his duties, the Congress its duties, and we ours. What powers the Congress should give the President in order to obtain the most effective production of war supplies, how the President should exercise those powers, whether a system of private contracts for war materials is conducive to unjustifiable waste and profiteering, or whether government production of necessary war supplies is a wiser course — these and like matters are not our business and upon them we should neither express nor intimate views. However circumscribed the judicial area may be, we had best remain within it. But the function of the judiciary is not so limited that it must sanction the use of the federal courts as instruments of injustice in disregard of moral and equitable principles which have been part of the law for centuries. I am compelled, therefore, to dissent from the judgment of the Court.

In the summer of 1917 the United States was at war with Germany. The enemy's submarine was taking terrific toll of our shipping. The immediate threat to our national security had to be met promptly. Congress enacted the Emergency Shipping Fund Act of June 15, 1917, 40 Stat. 182, conferring vast powers upon the President. He was authorized to place orders for such ships or material as "the necessities of the Government" may require; to modify, suspend, cancel or requisition contracts for the building, production, or purchase of ships or material; and to take over any plants and ships constructed or in the process of construction. If any person owning any ship, plant, or material refused to build or sell ships or material ordered by the Government "at such reasonable price as shall be determined by the President", he was empowered to take possession of the ships, material, or plant of such person.

On July 11, 1917, the President delegated all the authority vested in him by this Act to the United States Shipping Board Emergency Fleet Corporation. A stupendous task was thereby imposed upon the Fleet Corporation. "The program of construction, as well as operation was gigantic. It involved an expenditure of more than three and a half billion dollars, a sum greater than any expended

by any corporation in a similar period of time. Many of the officials and board members were without experience in either shipbuilding or operation. No adequate organization existed at the beginning. A complete organization to carry out its large program had to be created. There was a shortage of shipbuilding skill as well as shipbuilding facilities. The need for ships was imperative and constantly increased during the combat period." Report of the Select Committee on U. S. Shipping Board Operations, H. Rep. No. 1399, 66th Cong., 3d Sess., p. 24.

Bethlehem was the largest shipbuilding company in the world. Its five subsidiaries and their plants were experienced shipbuilders, with efficient and well-equipped organizations. As the Master in this case found, "it was understood by all parties concerned that the Fleet Corporation shipbuilding program would call for capacity production at each of Bethlehem's shipyards". Of course the Government had the power to take over Bethlehem's shipyards and plants. But the United States was at war. It needed ships—and it needed them at once. The shipyards and plants of a recalcitrant shipbuilder would not produce the necessary tonnage, at least not in the needed time, without an organization able to operate them at maximum efficiency. The Master found that "A failure to induce Bethlehem to undertake the shipbuilding program covered by these contracts, followed by the taking possession by the Fleet Corporation of the Bethlehem plants, could not have accomplished the desired result. It was Bethlehem's organization that was necessary to insure success to the shipbuilding program of the Fleet Corporation and, as the Government did not have the power to compel performance by an unwilling organization, if Bethlehem demanded its price on the basis of substantial commercial profits rather than contribute such services on a patriotic basis, the Government was obliged to take the contracts on such basis or not at all."

Bethlehem does not deny that in these negotiations the Government's legal power to requisition its shipyards was, for purposes of bargaining, an empty weapon. "It is also true", Bethlehem admits, "that, although the Fleet Corporation had the power to take over Bethlehem's yards, what it really required for the carrying out of its program was the use of Bethlehem's organization—its knowledge of how to build ships." The representatives of both Bethlehem and the Fleet Corporation knew that the Government

did not regard its power to requisition plants and shipyards as a satisfactory alternative to making contracts with private shipbuilders for the construction of ships.[1] It is not for us to say that the Government should not have determined upon such a policy. It is enough that when these contracts were made, none of the parties believed that there was open to the Government the feasible alternative which now, twenty-five years later, this Court says was open to it.

This was the setting in which the contracts in suit were made. Bethlehem was represented throughout the negotiations by Joseph W. Powell, its vice president and operating manager, and Harry Brown, its technical manager, described by the Master as "two of the ablest and most experienced shipbuilders and estimators of shipbuilding costs in the United States". On behalf of the Fleet Corporation the active negotiators were Admiral E. T. Bowles, manager of its division of steel ship construction, and G. S. Radford, manager of its contract division. The Master characterized Bowles and Radford as "equally competent shipbuilding experts". However, they were not empowered to conclude contracts on behalf of the Fleet Corporation. That ultimate authority belonged to Charles Piez, the vice-president and general manager of the Fleet Corporation. Piez was a business man who had had no previous shipbuilding experience, and the Master found that "At the time of the negotiations relating to the contracts in controversy, the relations between Powell and Piez were very close. Piez, as Powell knew, had had no shipbuilding experience whatsoever, had implicit confidence in Powell's integrity and shipbuilding ability and experience, and was accustomed to look to him for information and assistance with respect to matters of shipbuilding."

[1] Whatever the scope and importance of the Government's requisitioning power in other situations (compare Baruch, American Industry in War, p. 77, with Sen. Rep. No. 944, 74th Cong., 1st Sess., pt. 2, pp. 4-5, 111-15), it was without significance in the Fleet Corporation's shipbuilding program. The reports of the Shipping Board show that the exercise of the power was limited to the acquisition of vessels which had been built or were being constructed; the power does not seem to have been employed to take over the shipyards of recalcitrant private contractors. Indeed, the policy of the Government, based upon its wartime needs, was to encourage, financially and otherwise, the construction and maintenance of shipyards by private interests. See 1st Annual Report of the U. S. Shipping Board (1917) pp. 12-15; 2d Annual Report (1918) pp. 33-36, 120-22; Report of Director General Charles Piez to the Board of Trustees of the U. S. Shipping Board Emergency Fleet Corporation (April 30, 1919) pp. 13-14, 78, 123; Report of the President of the U. S. Shipping Board Emergency Fleet Corporation to the Board of Trustees (August 1, 1919) pp. 25-26.

Following a conference in Washington on June 15, 1917, attended by Powell and other shipbuilders, the General Manager of the Fleet Corporation requested Bethlehem to submit formal proposals for the construction of ships. Throughout the entire negotiations which followed, the Fleet Corporation tried to persuade Bethlehem to enter into "lump-sum" contracts. Powell refused, insisting upon the so-called "half-savings" form of contract which he had originated. He set forth his proposals in his letter of December 13, 1917, to the Fleet Corporation: "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation."

After further conferences, Powell submitted a proposal, dated December 19, 1917, specifying the estimated costs and fixed fees of the vessels to be constructed. On the morning of January 3, 1918, before the Fleet Corporation had expressed any views on the proposal of December 19, Powell handed Piez a letter, dated January 3, 1918, offering to construct a greater number of vessels than was specified in his earlier proposal. The letter concluded "that while this company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels."

Upon receipt of this letter, Piez arranged a conference between Powell, Brown, Bowles, and Radford, which occurred on the afternoon of January 3. But Bowles and Radford did not know, and

neither was informed before or during the conference, of the offer made to Piez in Powell's letter of January 3. It can hardly be said, therefore, that this letter, neither addressed to nor made known to the real negotiators for the Government, was a factor in their negotiations.

At the conference, which lasted about five hours, Bowles again attempted to persuade Powell to undertake the construction upon a lump-sum basis. Powell was adamant, however, and Bowles had to acquiesce in the half-savings form of contract in order to reach any agreement. Powell insisted that the estimates previously submitted by Bethlehem were fair and reasonable. Neither Bowles nor Radford submitted any estimates or counter-proposals, "their criticism being limited to the opinion expressed by Bowles that the original and reduced estimates submitted by Powell were too high". Powell made several reductions in the estimates, and in response to Bowles' inquiry, Brown assured him that the estimates were about as accurate as could be made under the circumstances. Bowles and Radford thereupon agreed to the prices, subject to confirmation by Piez. On the same day they handed Piez the following memorandum:

"We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

"We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

"The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that Corporation. Realizing that the

Nation will need these vessels we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe we have made the best compromise possible under very difficult conditions."

As a consequence of these negotiations, the thirteen contracts here in controversy were executed, seven on February 1, 1918, and six thereafter.

The provisions of these contracts demand careful analysis. The contract marked No. 183, calling for the construction by Bethlehem of three steel tank vessels each weighing about 9,100 tons, is typical.

In order to provide the sums necessary for carrying on the work under the contract, the Fleet Corporation agreed to deposit in advance "such sums as may be necessary to constitute and keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder." The Fleet Corporation agreed also to assist Bethlehem "to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract". The price to be paid for each vessel was defined to include (a) the "actual cost"; plus (b) a fixed fee of $185,000, plus (c) one-half the amount by which the actual cost of each vessel should fall short of an estimated cost of $1,865,000.

It would be difficult to draft a more inclusive definition of "cost" than that contained in this contract. "Actual cost" was defined to include the following items, as well as "items similar thereto in principle": (a) the net costs of labor (including bonuses), materials, machinery, equipment, and supplies furnished by Bethlehem, and all other direct charges, such as insurance on the vessels, etc.; (b) a "proper proportion" of running expenses, including rentals, cost of repairs and maintenance, light, heat, power, insurance, management, salaries (including bonuses), and all other indirect charges; (c) a "proper proportion" of interest accrued on bonds, loans, or other debts existing or previously made, the proceeds of which "shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used," in the performance of the contract; (d) a "proper proportion" of taxes of all kinds, except federal taxes, with respect to the business or property; (e) a "proper proportion" of physical losses sustained in connection

with the construction of the vessels under the contract, including losses from fire, flood, storm, riot, vandalism, acts of God, acts of war, or other casualties; and (f) a "reasonable" allowance for depreciation of property and plants used in connection with the construction under the contract.

The Master found that under the "half-savings" clause Bethlehem was entitled to receive one-half the difference between the estimated cost and the actual cost, regardless of how this difference was achieved. Bethlehem was therefore not required to show that the "savings" were attributable to its efforts to increase efficiency.

Since the estimated costs of construction specified in the contracts are crucial in fixing the extent of Bethlehem's profits, it is necessary to consider how they were determined. According to the explanation furnished by Bethlehem, Brown prepared the estimated costs specified in Bethlehem's letter of December 19, 1917, as follows: As the basis of his estimate he took the cost of constructing Hull 253, a 9,100 ton tanker which had recently been completed at the Fore River yard. The cost of the material in Hull 253 was about $389,000, consisting of $150,000 for the steel structure and $239,000 for the remaining material. Brown estimated that the cost of the material in a similar tanker to be constructed in 1918 would be $817,000, including $399,000 for the steel structure and $418,000 for the remainder. His estimate assumed an increase in freight rates and costs of delivery of 42%. The next item was the cost of labor, which on Hull 253 amounted to 38.75 cents per hour. Brown assumed that wage scales would rise to 50 cents per hour, an increase of 29%, and that efficiency would decrease about 30%. Therefore, he estimated a total labor cost of $548,000, as compared with the actual labor cost upon Hull 253 of $326,000. Similarly, the estimates of plant operating expenses were computed on the basis of equally large assumed increases. The total estimated cost of material, labor, operating expenses, and overhead amounted to $1,694,000, to which Brown added a flat 10% allowance to cover items such as armed guard equipment and "to make allowance for other contingencies", making a total estimated cost of $1,863,000, or approximately $205 per ton. To this figure Powell added an additional $10 per ton because, as he testified, "there was an item of increased cost of steel, which represented a contract for

very high-priced steel that we had to use in connection with this program, and which amounted to about $2.50 a ton spread over the program that we expected to undertake. That was a very rough figure. Whatever else I put on I put on because I knew I was going to have to trade the final contract out with Admiral Bowles and I knew I would not get what I asked for, and if I did not ask for more than I expected I would not get out where I wanted to be." Brown testified that "He [Powell] took the figures that I gave him and added $10 a ton to it" for some reason which he could not recall.

The estimated cost finally specified in the contract for the construction of the three vessels was $1,865,000; the estimated cost of such vessels proposed in Powell's letter of December 19, 1917, was $1,983,800, a difference of $118,800, or less than 6% of the proposed estimate.

The Master found that during the negotiations the Fleet Corporation was uninformed as to the probable cost of materials and labor, Bethlehem's overhead and operating expenses, and depreciation and similar charges. Consequently, at the conference of January 3, 1918, from which emerged the contracts in controversy, the representatives of the Fleet Corporation did not submit any counter-offers to Bethlehem; they merely insisted that Bethlehem's estimates were too high. Brown's testimony is illuminating as to the nature of the bargaining at the conference:

"Q. Now I am asking you whether with respect to these vessels Admiral Bowles submitted any price of his own?

"A. No, sir.

"Q. Did he ask you how your estimates were made up?

"A. No, sir.

"Q. Did he ask you to justify your estimates in any way?

"A. No, sir.

"Q. He just objected to them repeatedly and said they were too high?

"A. Yes, sir.

"Q. But did not ask you to justify them?

"A. No, sir.

"Q. Until Powell finally came down to a figure which Bowles was willing to accept?

"A. Well, I should put it this way; to a figure which Mr. Powell refused to go below."

The total estimated costs of construction in the thirteen contracts in controversy amounted to $119,750,000. The total actual costs,

as defined in the contracts, were $92,990,521. The estimated costs therefore exceeded the actual costs by $26,759,479, or, to put it another way, the estimated costs were almost 29% greater than actual costs. Nowhere in the long record, as the Master found, is there any explanation or justification for the tremendous disparity between the estimated costs submitted by Bethlehem, or those specified in the contracts, and the actual costs.

Bethlehem's profits under these contracts amount to approximately $24,000,000, or about 22% of actual costs including extra work. In two of these contracts, Nos. 191 and 226, its profits exceed 34% and 32%, respectively. Moreover these figures do not include the profits made by Bethlehem Steel Company, an affiliate, on the sales to Bethlehem at the maximum prices permitted by the War Industries Board of 43,000 tons of steel used in the construction of ships under these contracts.

To speak of Bethlehem's profits as only 22% is in any event misleading. The profits are 22% of "cost", and not 22% of what might fairly be described as Bethlehem's capital investment in these contracts. For under these contracts Bethlehem took absolutely no risk of loss; in addition, the Government agreed to advance all sums necessary to finance the construction of the vessels. Even in usurious transactions the lender takes the risk of the borrower's insolvency. Here Bethlehem took no risks at all.

Bethlehem has already received from the Government the total costs of construction (including items for wage increases and extra work), plus fixed profits of $11,962,400 (representing about 11% of the actual costs including extra charges), plus bonuses of $8,093,157 under the half-savings clause (over 7% of costs). It has thus received total profits of more than $20,000,000 under these contracts. In the present suits it is seeking additional sums of more than $7,500,000, of which about $3,800,000 represents bonuses under the contracts in question. In sustaining the judgments of the lower courts, this Court is awarding Bethlehem further profits of about 4% on these contracts.

The Master expressly found that it was essential that Bethlehem undertake to build the vessels provided for in the contracts, and that since the Government needed Bethlehem's organization, it had no satisfactory alternative. It had to make the contracts on Bethlehem's terms or not at all. He concluded, nevertheless, that since "the Fleet Corporation made the contracts with open eyes, al-

though resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its 'pound of flesh' ", the contracts were enforceable by Bethlehem in the absence of any proof of fraud.

The District Court concurred in the proposition that the absence of fraud made the contracts invulnerable. But its conclusion is contradicted by its findings: "The managers for the contractor adopted the famous Rob Roy distinction who admitted he was a robber but proudly proclaimed that he was no thief. The contractor boldly and openly fixed the figures in the estimated cost so high as to give them the promise of large bonus profits. The managers for the Fleet Corporation knew that the estimate was high and why it was made high and so protested it. The reply of the contractor's managers was, 'We will take the contract with this promise of bonus profits incorporated in it but not otherwise. You take it or leave it'. Whatever wrong there was in this, may have been the wrong in a daylight robbery but there was no element of deception in it." 23 F. Supp. 676, 679.

Similarly, the affirmance of the Circuit Court of Appeals appears to have been based upon the assumption that the government's failure to show fraud was fatal: "It is of course obvious that these negotiations took place in time of war when the need of the Government for ships was extremely urgent and the necessity of reaching an agreement with Bethlehem, therefore, vital. It is equally clear that Bethlehem insisted upon assuring itself a margin of profit which in view of the necessities of the Government was so large as to indicate an attitude of commercial greed but little diluted with patriotic feeling. There is no doubt that this attitude on the part of Bethlehem was deeply resented by the Government representatives but the latter were faced with the alternative of either agreeing to Bethlehem's terms or taking possession of its shipyards and having the Government itself construct the vessels. We think the record clearly indicates that the Government representatives felt that the latter course could not have accomplished the shipbuilding program with the speed which was essential. It was Bethlehem's existing shipbuilding organization that was necessary to insure success to the program of the Fleet Corporation. Consequently the Government representatives, feeling as they did that Bethlehem's organization was necessary to their program, were obliged to accept the terms offered by Bethle-

hem. This they did with full knowledge, as we have said, that the estimated cost figures included in the contracts did not represent close approximations but were so prepared as to assure to Bethlehem substantial additional profits by way of the bonus for savings. It follows that while Bethlehem may be condemned for having taken advantage of the Nation's necessities to secure inordinate profits it cannot be charged with having misrepresented the facts to the Government's representatives." 113 F. 2d 301, 305-06.

Thus, not less than six times did the Circuit Court of Appeals declare that the unconscionable terms of this contract were forced upon the Government by the dire necessities of national self-preservation. Nevertheless the Court found itself impotent to resist the demand that the courts themselves become the means of realizing these "inordinate profits". But law does not subject courts to such impotence. Courts need not be the agents of a wrong that offends their conscience if they heed the commands of law.

In England prior to 1285 (Statute of Westminster II, 13 Edw. I, c. 50) suitors were frequently "obliged to depart from the Chancery without getting writs, because there are none which will exactly fit their cases, although these cases fall within admitted principles." Maitland, Forms of Action at Common Law, Lect. IV (1936 ed.) p. 51. Today it is held that because the circumstances of this case cannot be fitted into a neatly carved pigeonhole in the law of contracts, "daylight robbery", exploitation of the "necessities" of the country at war, must be consummated by this Court. It is said that familiar principles would be outraged if Bethlehem were denied recovery on these contracts. But is there any principle which is more familiar or more firmly embedded in the history of Anglo-American law than the basic doctrine that the courts will not permit themselves to be used as instruments of inequity and injustice? Does any principle in our law have more universal application than the doctrine that courts will not enforce transactions in which the relative positions of the parties are such that one has unconscionably taken advantage of the necessities of the other?

These principles are not foreign to the law of contracts. Fraud and physical duress are not the only grounds upon which courts refuse to enforce contracts. The law is not so primitive that it sanctions every injustice except brute force and downright fraud. More specifically, the courts generally refuse to lend themselves to the en-

forcement of a "bargain" in which one party has unjustly taken advantage of the economic necessities of the other. "And there is great reason and justice in this rule, for necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them." *Vernon* v. *Bethell*, 2 Eden 110, 113. So wrote Lord Chancellor Northington in 1761.

The fact that the representatives of the Government entered into the contracts "with their eyes wide open" does not mean that they were not acting under compulsion. "It always is for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice was made according to interest does not exclude duress. It is the characteristic of duress properly so called." Holmes, J., in *Union Pac. R. R. Co.* v. *Pub. Serv. Comm.*, 248 U. S. 67, 70. In that case a state unconstitutionally exacted a fee for a certificate of authority to issue railroad bonds. A railroad which had paid the fee and obtained a certificate, rather than run the risk of subsequent invalidation of its bonds and imposition of serious penalties, was held to have been coerced into making the payments. In *Swift Company* v. *United States*, 111 U. S. 22, 29, the taxpayer's only alternatives were "to submit to an illegal exaction, or discontinue its business". The payment of the tax in these circumstances was held to be under duress. See also *Ward* v. *Love County*, 253 U. S. 17, 23. The courts generally regard the dilemma of the taxpayer who must either pay the taxes or incur serious business losses as a species of duress. E. g.; *Morgan* v. *Palmer*, 2 Barn. & C. 729; *Ripley* v. *Gelston*, 9 Johns. 201; *Scottish U. & N. Ins. Co.* v. *Herriott*, 109 Iowa 606; see Notes, 64 A. L. R. 9, 84 A. L. R. 294.

Underlying all these cases is the law's recognition of a basic psychological truth. In *Atkinson* v. *Denby*, 7 Hurlst. & N. 934, 936, Cockburn, C. J., said that "Where the one person can dictate, and the other has no alternative but to submit, it is coercion". See also Abbott, C. J., in *Morgan* v. *Palmer*, 2 Barn. & C. 729, 735: "But if one party has the power of saying to the other, 'that which you require shall not be done except upon the conditions which I choose to impose,' no person can contend that they stand upon anything like an equal footing." And these were decisions in days when law was supposed to be much more rigid and more respectful of forms than we now ordinarily deem just.

The fundamental principle of law that the courts will not enforce a bargain where one party has unconscionably taken advantage of the necessities and distress of the other has found expression in an almost infinite variety of cases. See *Lonergan* v. *Buford*, 148 U. S. 581, 589-91; *Snyder* v. *Rosenbaum*, 215 U. S. U. S. 261, 265-66. Perhaps the most familiar is the situation of the mortgagor who under the pressure of financial distress conveys his equity of redemption to the mortgagee. The courts will scrutinize the transaction very carefully, *Villa* v. *Rodriguez*, 12 Wall. 323, 339, and if it appears that the mortgagee has taken unfair advantage of the other's position, the conveyance will not be enforced. Compare *Vernon* v. *Bethell*, 2 Eden 110; *Close* v. *Phipps*, 7 M. & G. 586; *Richardson* v. *Barrick*, 16 Iowa 407.

Similarly, an heir or remainderman who is compelled by financial circumstances to sell his expectancy for a song may recover it if the vendee has unduly exploited the other's distress. *Wood* v. *Abrey*, 3 Maddock's Chan. 216, 219 (where the Vice-Chancellor, Sir John Leach, said: "If a man who meets his purchaser on equal terms, negligently sells his estate at an under value, he has no title to relief in equity. But a Court of Equity will inquire whether the parties really did meet on equal terms; and if it be found that the vendor was in distressed circumstances, and that advantage was taken of that distress, it will avoid the contract."); *Underhill* v. *Harwood*, 10 Ves. Jr. 209, *M'Kinney* v. *Pinckard*, 29 Va. 149; *Butler* v. *Duncan*, 47 Mich. 94; *Brown* v. *Hall*, 14 R. I. 249. In *Administrators of Hough* v. *Hunt*, 2 Ohio 495, 502, a person heavily in debt, in order to obtain a further loan with which to meet debts falling due, agreed to buy land at more than double its value. The court found that the lender had unjustly taken advantage of the borrower's necessities and therefore rescinded the contract: "The rule in chancery is well established. When a person is incumbered with debts, and that fact is known to a person with whom he contracts, who avails himself of it to exact an unconscionable bargain, equity will relieve upon account of the advantage and hardship." This was written in 1826. To the same effect are *Vyne* v. *Glenn*, 41 Mich. 112, and *Bither* v. *Packard*, 115 Maine 306.

Another class of cases in which this principle has been applied arises where a customer of a gas or electric company pays charges which he asserts he is not obligated to pay, rather than have his

service disconnected. Payments made in such circumstances are regarded as coerced. See *Boston* v. *Edison Electric Illuminating Co.*, 242 Mass. 305, 310; *Westlake & Button* v. *St. Louis*, 77 Mo. 47; Note, 34 A. L. R. 185.

Cobb v. *Charter*, 32 Conn. 358, illustrates another type of controversy in which the courts have given effect to the historic principle of duress which is now seemingly rejected as an innovation. The defendant there had possession of a chest of tools belonging to the plaintiff, a mechanic. He refused to give up the chest, which the plaintiff needed in order to ply his trade, unless the latter would pay a bill for which he denied responsibility. The plaintiff's payment of the bill in these circumstances was held to have been made under duress. Accord: *Lonergan* v. *Buford*; 148 U. S. 581, 589-91; *Fenwick Shipping Co.* v. *Clarke Bros.*, 133 Ga. 43; *Stenton* v. *Jerome*, 54 N. Y. 480; *Harmony* v. *Bingham*, 12 N. Y. 99.

In *Stiefler* v. *McCullough*, 97 Ind. App. 123, a merchant who had to obtain a loan in order to remain in business agreed to pay the president of a bank an exorbitant sum in consideration for his services in procuring a loan. The court refused to enforce this agreement as unconscionable. Similarly, in *Niedermeyer* v. *Curators of State University*, 61 Mo. App. 654, a student paid tuition fees which he regarded as excessive, and which he did not believe he was required to pay under his contract with the university, only because he feared expulsion for non-payment. This payment was held to have been made under duress and hence recoverable. Cf. *Baldwin* v. *Sullivan Timber Co.*, 20 N. Y. Supp. 496; *Kelley* v. *Caplice*, 23 Kans. 474.

Strikingly analogous to the case at bar are the decisions that a salvor who takes advantage of the helplessness of the ship in distress to drive an unconscionable bargain will not be aided by the courts in his attempts to enforce the bargain. *Post* v. *Jones*, 19 How. 150, 160; *The Tornado*, 109 U. S. 110, 117; *The Elfrida*, 172 U. S. 186, 193-94. In *Post* v. *Jones*, *supra*, it was said that the courts "will not tolerate the doctrine that a salvor can take the advantage of his situation, and avail himself of the calamities of others to drive a bargain; nor will they permit the performance of a public duty to be turned into a traffic of profit". These cases are not unlike the familiar example of the drowning man who agrees to pay an exorbitant sum to a rescuer who would otherwise permit

him to drown. No court would enforce a contract made under such circumstances.[2]

To deny the existence of duress in a Government contract by ironic reference to the feebleness of the United States as against the overpowering strength of a single private corporation is an indulgence of rhetoric in disregard of fact. The United States with all its might and majesty never makes a contract. To speak of a contract by the United States is to employ an abstraction. We must not allow it to become a blinding abstraction. Contracts are made not by 130 million Americans but by some official on their behalf. Because the national interest is represented not by the power of the nation but by an individual professing to exercise authority of vast consequence to the nation, action by Government officials is often not binding against the Government in situations where private parties would be bound.[3] The contracts here were not made by an abstraction known as the United States or by the millions of its citizens. For all practical purposes, the arrangement was entered into by two persons, Bowles and Radford. And it was entered into by them against their better judgment because they had only Hobson's choice—which is no choice. They had no choice in view of the circumstances which subordinated them and by which they were governed, namely, that ships were needed, and needed quickly, and Bethlehem was needed to construct them quickly. The legal alternative—that the Government take over Bethlehem—was not an actual alternative, and Bethlehem knew this as well as the representatives of the Government.

The suggestion is made that Bethlehem's profits under these contracts were not exceptional when compared with the profits made under similar contracts, and that the enormous profits claimed by Bethlehem under these contracts cannot be regarded as

[2] The books are full of cases in which courts have refused to lend themselves as collecting agencies of contracts made under circumstances offensive to the conscience. See, for example, in addition to the cases cited in the text, Johnson v. Ford, 1[illegible] Tenn. 63; Harris v. Cary, 112 Va. 362; Northwestern Mut. Life Ins. Co. v. Barker, 241 Ky. 490, 497; Calvano v. Brill, 171 Misc. 298.

[3] E.g., the right to recover money paid under mistake of law, Wisconsin Central Railroad v. United States, 164 U. S. 190, 212, and the unavailability against the Government of the defenses of laches or neglect of duty, United States v. Kirkpatrick, 9 Wheat. 720, 735, and estoppel based on unauthorized acts of its agents, Lee v. Munroe, 7 Cranch 366; Utah Power & Light Co. v. United States, 243 U. S. 389, 408-09.

supporting the inference that Bethlehem took advantage of the Government's distress. But the only contracts before us are those involved in this litigation. There is nothing in this record which enables us to say that although these contracts are unconscionable, all contracts made by the Government during the same period were no less unconscionable. And even if this were so, it would be no argument that this Court should give its sanction to these contracts by making itself the instrument for realizing the unconscionable profits. What little light the record does cast upon contemporary contracts gives no justification for regarding these contracts as typical. The policy of Charles M. Schwab, Director General of the Fleet Corporation, was to make contracts providing for a maximum profit of 10%, out of which all federal taxes would have to be paid. See Letter of Oct. 2, 1918, to Edward N. Hurley, Chairman of the Shipping Board, relating to contracts with the American Shipbuilding Company.

If we are to go outside the record, the evidence is confusing and unreliable. It must be borne in mind that Bethlehem took no risk of loss, that under the contracts it was protected from the risks of rising costs of labor, materials, transportation, etc., that under the contracts it was not required to make any capital expenditures, that the Government agreed to advance all sums that should be necessary for the performance of the contracts. It is idle to compare the profits made by Bethlehem under these contracts with profits made by industrial concerns of various types under different types of contracts. Such figures are statistical quicksand unless we are told also that in each case the contractor was not required to make any capital investment, that he was insured against normal business risks, and that he was guaranteed a profit, regardless of any change in circumstances.

We know that the policy of the Navy Department with respect to so-called straight cost-plus shipbuilding contracts was to allow profits of 10% of actual cost. See Annual Report of the Secretary of the Navy (1917) p. 33; Annual Report (1918) p. 685; Annual Report (1919) pp. 572-76; Annual Report (1920) pp. 147-48. We know that, similarly, the policy of the War Department with respect to cost-plus contracts for the construction of cantonments was to allow profits not exceeding 10% of cost. See Annual Report of the Secretary of War (1917) vol. 1, p. 28; Annual Report (1918) vol. 1, p. 1319; Annual Report (1919) pp. 4158-42. See also Crowell,

Government War Contracts, p. 85 (in "emergency building contracts" a sliding scale of profits was employed, ranging from cost plus 7% on contracts less than $100,000 to cost plus 2½% on contracts more than $10,000,000). Similarly, contracts for the construction of buildings to house war workers were let on the basis of cost plus 2½% on contracts over $1,000,000, and 3½% on contracts under $1,000,000. See testimony of Otto M. Eidlitz, President of the U. S. Housing Corporation, Hearings before the subcommittee of the Senate Committee on Public Buildings and Grounds pursuant to S. Res. 371, 65th Cong., 3d Sess., p. 35.

These statistics obviously do not tell the whole story of Government contracts in the last war. But they indicate plainly enough that this Court should not accept, as a basis for decision in this case, the premise that Bethlehem's profits were conventional when compared with profits made in comparable transactions.

It is said, further, that even if these contracts are unenforceable when measured by standards of justice and equity enforced by the courts for centuries, nevertheless this Court must enforce the contracts now before us because Congress and the President specifically authorized such a traffic in profits. The suggestion is not consistent with historical fact.

The legislative history of the Emergency Shipping Fund Act furnishes no support for the contention that in conferring upon the President authority to enter into contracts for the construction of ships, Congress thereby commanded the courts to enforce all contracts that were made, without regard to their provisions and the circumstances under which they were negotiated. On the contrary, the debates contain many indications that Congress expected that the shipbuilders of the nation would provide their services for a reasonable compensation, and that the power conferred upon the President to take over shipyards would not be exercised. See remarks of Senator Knox, 55 Cong. Rec. 2518; Senator Calder, 55 *id.* 2529; Rep. Fitzgerald, 55 *id.* 3018. Indeed, the Act itself specified that ships should be built "at such reasonable price as shall be determined by the President". 40 Stat. 182, 183.

The National Defense Act, 39 Stat. 166, 213, specifically provided that "The compensation to be paid to any individual, firm, . . . for its products or material, or as rental for use of any manufacturing plant while used by the United States, shall be fair and just." There can be no clearer indication that Congress did

not authorize or approve any policy of trafficking in profits. The fact that Congress took care to ascertain whether the war agencies were letting contracts under which excessive profits were being made, see Hearings before subcommittee of the House Committee on Appropriations on H. R. 3971, 65th Cong., 1st Sess., especially pp. 15-17, shows very plainly that Congress in no way countenanced exploitation for exorbitant private profit of the necessities of the Government.

Authority given to make contracts does not imply authority to make unconscionable contracts. Suppose that Congress in authorizing the contracts in question had written into its legislation: "*Provided*, that no agency of government shall be authorized to enter into unconscionable contracts." Can it be that because Congress did not expressly provide that "unconscionable contracts" are unauthorized it impliedly sanctioned the making of "unconscionable contracts"? Or suppose the estimated costs in the contracts were so inflated by Bethlehem that its profits were 200% rather than 22%. Would this Court still be bound to enforce these contracts on the ground that Congress had commanded their enforcement? Surely Congress did not impliedly repeal historic legal principles and prohibit this Court from exercising its duty to withhold relief when the particular circumstances disclose an unconscionable arrangement in the making of which the Government's contracting officers had no practical choice.

The suggestion that President Wilson authorized a "traffic in profit" is refuted, if explicit proof be needed, by his utterances. For example, addressing a meeting of mine operators and manufacturers on July 12, 1917, he spoke as follows:

"I hear it insisted that more than a just price, more than a price that will sustain our industries, must be paid; that it is necessary to pay very liberal and unusual profits in order to "stimulate production"; that nothing but pecuniary rewards will do it—rewards paid in money, not in the mere liberation of the world.

"I take it for granted that those who argue thus do not stop to think what that means. Do they mean that you must be paid, must be bribed, to make your contribution, a contribution that costs you neither a drop of blood nor a tear, when the whole world is in travail and men everywhere depend upon and call to you to bring them out of bondage and make the world a fit place to live in again, amidst peace and justice?

"Do they mean that you will exact a price, drive a bargain, with the men who are enduring the agony of this war on the battlefield, in the trenches, amidst the lurking dangers of the sea, or with

the bereaved women and the pitiful children, before you will come forward to do your duty and give some part of your life, in easy, peaceful fashion, for the things we are fighting for, the things we have pledged our fortunes, our lives, our sacred honor to vindicate and defend—liberty and justice and fair dealing and the peace of nations? Of course you will not.

"It is inconceivable. Your patriotism is of the same self-denying stuff as the patriotism of the men dead or maimed on the fields of France, or else it is no patriotism at all.

"Let us never speak, then, of profits and of patriotism in the same sentence, but face facts and meet them.

"Let us do sound business, but not in the midst of a mist. Many a grievous burden of taxation will be laid on this Nation, in this generation and in the next, to pay for this war. Let us see to it that for every dollar that is taken from the people's pockets it shall be possible to obtain a dollar's worth of the sound stuffs they need." Public Papers of Woodrow Wilson, Vol. 3, pp. 75-6; 55 Cong. Rec. 4995.

Mr. Justice Holmes has said that "Men must turn square corners when they deal with the Government." *Rock Island &c. R. R.* v. *United States*, 254 U. S. 141, 143. His admonition has particular relevance when this Court is called upon to enforce agreements made with the Government at war for the production of supplies essential to the prosecution of the war. During wartime the bargaining position of Government contracting officers is inherently weak, no matter how conscientious they may be. If they are to deal on equal terms with private contractors, particularly where the subject matter of contracts is so intricate and so specialized as the building of ships, they must have available to them not only detailed information but also the time within which to study the data and the freedom to exercise a real choice. In the last war, at least, this was not generally true. See Sen. Rep. No. 944, 74th Cong., 1st Sess., pt. 4, p. 30. It is not difficult in these days to appreciate the position of negotiators for the Government in time of war and to realize how much the pressures of war deprive them of equality of bargaining power in situations where bargaining with private contractors is the only practicable means of securing necessary war supplies. Because the Government is in such a dependent position, and because those who deal with it on a cost-plus arrangement or some similar basis are assured of a profit, it is wholly consistent with practicalities and makes no unduly idealistic demand for the law to judge the arrangements of such wartime contractors by standards not unlike those by which a fi-

duciary's conduct is judged. Those upon whom the nation is dependent for its supplies in the defense of its life would hardly wish to be judged by lower standards.

The modes are vast and varied by which the nation obtains its war supplies. What will best supply war needs in amplest measure in the quickest time and least wastefully—whether by private letting and, if so, under what restrictions and safeguards; under what circumstances the Government should do its own supplying either by taking over old plants or building new ones or a combination of the two; to what extent and through what means peacetime habits and traditions may be displaced and disregarded—these are questions of policy for the wisdom and responsibility of the Congress and the Executive. The very limited scope of inquiry to which a litigation on a particular transaction is confined is hardly the basis for judgment on such far-flung issues. If the history of this Court permits one generalization above all others, it is the unwisdom of entering the domain of policy outside the very narrow legal limits presented by the record of a particular litigation. Such intrusion into the executive and legislative domains is not conducive to the just disposition of the immediate controversy. We are much less likely to go wrong if we do not depart from the well-grooved path of judicial competence.

This Court should not permit Bethlehem to recover these unconscionable profits, and thereby "make the court the instrument of this injustice." *Thomas* v. *Brownville, &c. R. R. Co.*, 109 U. S. 522, 526.

Mr. Justice DOUGLAS.

On the point of duress and coercion I thoroughly agree with the views expressed by Mr. Justice BLACK and join in the opinion of the Court. For the reasons stated by Mr. Justice BLACK, the claim that Bethlehem's profits were unconscionable in the legal sense would likewise fail.

There is, however, one aspect of the case on which I take a somewhat different view.

The United States does not contest here the right of Bethlehem to retain its "fixed fee" of approximately $12,000,000 for the construction of the ships. The dispute revolves around an additional sum of $12,000,000 which Bethlehem claims under the so-called

"bonus-for-savings" provision of the contracts. That provision in the several contracts was the same except for the amount of the fixed fee. Thus a typical contract provided: "Should the actual cost be less than the estimated . . . cost . . . the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of . . . . $210,000 one-half the amount by which such actual cost of each vessel falls short of the estimated cost . . . ."

I agree that the consummation of the bargain depended upon the inclusion of this "savings" clause and that in each instance there was but one contract, not several. My view, however, is that each contract was divisible or severable. " . . . . the essential feature of such a contract is that a portion of the price is by the terms of the agreement set off against a portion of the performance and made payable for that portion, so that when an apportioned part of the performance has been rendered a debt for that part immediately arises." Williston on Contracts, § 861 (Rev. Ed.). In other words, the whole performance of each contract was divided "into two sets of partial performances, each part of each set being the agreed exchange for a corresponding part of the set of performances to be rendered by the other promisor". *Id.*, § 860A. (1) The promise of the Fleet Corporation to pay the actual cost plus the fixed fee was exchanged for Bethlehem's undertaking to construct the ships. (2) The promise of the Fleet Corporation to pay one-half the amount by which the actual cost fell short of the estimated cost was exchanged for Bethlehem's promise (which is implied) to effect the savings by increasing efficiency.

Although I am clear that the contracts would not have been made but for the inclusion of the "savings" provision, I do not believe that there is a "necessary dependency" between these two sets of promises within the rule of *Philadelphia, W. & B. R. Co.* v. *Howard*, 13 How. 307, 339. And see *Pollak* v. *Brush Electric Assoc.*, 128 U. S. 446, 455; *Fullmer* v. *Poust*, 155 Pa. 275, 278; Restatement, Contracts, § 266(3). Precedents, to be sure, are of little aid since each case turns on its special circumstances. But the construction of divisibility seems warranted by the facts, though here as in other cases considerable reliance must be placed on implications.

Bethlehem's argument against divisibility rests on such testimony of Piez, who represented the Fleet Corporation, as follows:

"The price had to be placed for actual cost, if we knew the cost, plus an allowance for contingencies, plus an allowance for incentive, plus the fee. So we start out with the bare cost; then in order to meet any contingencies that may happen, add some allowance for contingencies; in order to give a proper incentive, add an incentive allowance; and then add the fee." That is to say the "savings" clause was deemed to be valuable from the Fleet Corporation's viewpoint as an "incentive" to keep the costs down and to expedite the work. And Powell, the author of the "savings" clause in this case and the representative of Bethlehem, testified that the savings to be obtained would be sufficient to "wipe out the excess profits taxes", so that the fixed fee would be "net" to Bethlehem.

But Powell's testimony also indicated that while the "savings" clause was an "incentive", Bethlehem was to earn the "savings":

"Q. Then I take it that one of your great problems, as the driving force of this organization, was to improve your labor conditions, or first to prevent labor conditions from getting worse and then to try to improve them?

"A. Yes.

"Q. Over what they were in December of 1917?

"A. Yes.

"Q. And if you were able to do that, then there was a possibility of some profit in these contracts under the half savings clause?

"A. Yes.

"Q. Was there any likelihood, or did you at that time foresee any likelihood, of any substantial saving in your material items?

"A. No, I should not have expected at that time to make any saving of any amount in the materials.

"Q. So that, if Bethlehem was to make any money out of these contracts in excess of the fixed fee, it was your judgment that the only way to do it was by increasing the efficiency of the yards?

"A. Exactly."

Powell also testified:

"The estimate was a figure which we had to shoot at that in my judgment gave us a reasonable profit or a chance of making a substantial saving. To make that saving, we had to operate more efficiently than what we might say was average efficiency under conditions that then existed. If we were going to make that saving, we had to overcome any increased cost due to decreased efficiency, and increase efficiency beyond what it was at that time."

And Piez testified that the provision was to give the ship-

builders an "incentive" to "use their ingenuity to make a larger profit."

The Special Master found that the estimates designated as "base prices" in the contracts "would afford Bethlehem a reasonable opportunity to effect 'savings' as a result of its efforts and ability to increase efficiency of management and labor as compared with average efficiency then existing." He also found that "it was understood that participation in 'savings' was supposed to represent a bonus or additional compensation to be earned by Bethlehem as consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing." Yet he further found that "Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency."

My difficulty is with that last finding. If Bethlehem was to share half of the savings "however earned", then its right to receive the bonus might well depend on a wholly fortuitous circumstance or it might accrue as petitioner suggests "simply as a reward for the inaccuracy of its estimate of actual costs." Under that view Bethlehem would be entitled to $12,000,000 additional compensation merely because the wholesale price index fell. Yet that would be tantamount to a gift by public officers of property of the United States. The same result would follow if the clause be read as containing merely a "best efforts" provision. The contract already provided that Bethlehem "in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner." Even in the absence of such a provision, one would be implied. *United States* v. *A. Bentley & Sons Co.*, 293 Fed. 229, 235; *United States* v. *George A. Fuller Co.*, 296 Fed. 178, 180. Hence it is difficult for me to imply that this additional $12,000,000 was offered as a reward for performing an obligation which the law would impose on the contractor in any event. *Burke & James, Inc.* v. *United States*, 63 C. Cls. 36, 57. That, too, would be a grant of public funds for which the United States would receive no *quid pro quo*.

Hence it seems more reasonable to imply that Bethlehem was to render an additional performance for the additional compensation of $12,000,000. Such a construction of the contracts avoids the difficulties I have mentioned, as it gives the United States a *quid pro quo* for its promise to pay an additional $12,000,000. Cf. *Dayton Airplane Co.* v. *United States*, 21 F. 2d 673, 682-683.

And it is supported by the testimony of the representatives of the two contracting parties who negotiated the contracts.

In that view of the matter Bethlehem would be put to its proof that it effected the savings which it now claims. Mere guesswork would not be enough. *J. J. Preis & Co.* v. *United States*, 58 C. Cls. 81, 86. Precise proof of each dollar saved might not be possible. But a reasonable approximation of Bethlehem's contribution to the savings would be necessary. Such burden of proof has been sustained in other cases involving similar contracts. *Cohen, Endel & Co.* v. *United States*, 60 C. Cls. 513; *F. Jacobson & Sons* v. *United States*, 61 C. Cls. 420. The Circuit Court of Appeals stated that there was "some evidence tending to show that savings resulted, in part at least, from increased efficiency." 113 F. 2d 301, 307. But there was no clear showing that special efforts were made to reduce costs and that the savings which resulted were traceable to such efforts. The necessary findings on that issue were not made.